114-430

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 156.

FRANCIS DODGE, WILLIAM CHAPMAN, H. H. DODGE ET AL., APPELLANTS.

vs.

THOMAS KNOWLES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 11, 1881.

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1 *Bill for Sale of Real Estate of Deceased Persons. Filed Dec. 17, 1878.*

No. 6561. Docket 19.

In the Supreme Court of the District of Columbia, the 17th day of December, 1878. In Equity.

THOMAS KNOWLES, Plaintiff, vs. FRANCIS DODGE & others, Defendants. } 6561. Equity Docket 19.

To the supreme court of the District of Columbia, holding an equity court for said District:

The plaintiff complains as follows:

1. That he is a resident of said District, and files this bill of complaint in his own behalf and of all other hereinafter specified creditors of the hereinafter mentioned Frances J. Dodge, deceased, who may be admitted by the court and may contribute to the costs of this proceeding.

2. That said above-named defendants are sued as follows: The said Francis Dodge, in his own right, also as executor of and trustee under the last will and testament of Frances J. Dodge
2 (his wife), late of the District aforesaid, and also as trustee under and by virtue of a deed of trust to him from Francis J. Chapman, dated on the 22d January, A. D. 1852, recorded in Liber I. A. S., No. 36, folios 452, &c., of the Land Records of said District, and also as trustee under a deed of trust to him from William Chapman and others, dated on the 26th April, A. D. 1867, and recorded in liber E. C. E., No. 20, folios 285, &c., of the said Land Records; the said William Chapman, of Green Bay, in the State of Wisconsin; John J. Beall and Elizabeth D. Beall, Ella S. Dodge, Watkins Addison, Junior, and Maggie D. Addison and Forrest Dodge, being sued in their own right; the said Henry H. Dodge, being sued in his own right, and also with said J. Thomas Davis as the surviving trustees under a deed of trust from said John J. Beall and Elizabeth Dodge to them and Hugh Caperton (late of said District, deceased), dated on the 12th June, A. D. 1862, and recorded in liber I. A. S., No. 223, at pages 37, &c., of the Land Records aforesaid; the said Anthony Hyde and Charles M. Mathews are sued as
3 trustees under two (2) deeds of trust, to be hereinafter recited; and the said George W. Riggs, as treasurer of the "Peabody Library Association of Georgetown," in said District. All said defendants, except said William Chapman, being residents in the said District, and all being adults except the said Forrest Dodge, who is a minor, and aged about 20 years of age.

3d. That on the 22d January, A. D. 1852, the said Frances J. Chapman, who afterwards intermarried with defendant Francis Dodge, being seized and possessed of real estate in said District as follows: In severalty of lot No. three (3), in Davis' subdivision of square Nos. two hundred and twenty-two (222), in the city of Washington, in said District; of an undivided one-fifth ($\frac{1}{5}$) part of or interest in

lot No. two (2), in said square No. two hundred and twenty-two (222), in said city, according to said subdivision of said square; & of an undivided one-fifth part of or interest in lots numbered forty-three (43) and forty-four (44), in Beall's addition to Georgetown, in said District, by said deed of trust made in contemplation of
4 marriage, dated on the 22d January, A. D. 1852, & recorded in the liber I. A. S. No. 36, at folios 452, &c., of said Land Records, conveyed her interest in the said real estate & the improvements, rights, and appurtenances to the said Frances Dodge, his heirs, executors, & administrators, for her sole & separate use during the term of her natural life, & not to be subject to the control or to the contracts of the said grantee, except so far as may be consistent with the provisions of said deed of trust, reserving to herself the power to devise and by will dispose of the said trust subject; said Frances Dodge to hold the same as thus disposed of and devised; all which will appear from said deed of trust, the record of which plaintiff prays to be allowed to exhibit & read as a part of this bill of complaint.

4th. That by the subsequent death & intestacy of Eleanor M. Forrest, her sister, who died June 30th, 1858, the said Frances J. Dodge became seized and possessed of an additional undivided one-twentieth ($\frac{1}{20}$) part of or interest in said subdivision lot No. 2, in
5 square No. 222; & also of an undivided one-fourth ($\frac{1}{4}$) part of or interest in subdivision lot No. 1, in said square No. 222, in said city; and also of an undivided one-twentieth ($\frac{1}{20}$) part of or interest in said lots Nos. 43 and 44, in Beall's addition to said Georgetown, in said District, and the improvements, rights, and appurtenances.

5th. That by deed dated on the 26th April, A. D. 1867, and recorded in liber E. C. E., No. 20, at pages 285, &c., of the said Land Records, the said William Chapman and others conveyed to the said Francis Dodge, as trustee, three undivided one-fourth parts of or interest in said lots numbered forty-three (43) & forty-four (44), in Beall's addition to said Georgetown, in trust, to apply the income therefrom to the said Francis J. Dodge during her life, & at her death for the benefit of her surviving children, said Chapman conveying & selling one-fourth part, which will appear from the record of said deed, which plaintiff prays he may be allowed to exhibit and read as a part of this bill of complaint.

6 6th. That the said Frances J. Dodge, being, during the year 1875 & for several years there[to]fore, indebted unto said plaintiff in a large sum of money for groceries and other articles of food by him furnished to her, on the credit of her sole & separate estate, for the maintenance of herself & her children, & her said husband, the said Frances Dodge being insolvent, and entirely without property or estate, caused the said Frances Dodge for her, he signing the same as "trustee for Fanny J. Dodge," to make and deliver to the said plaintiff, or to his order, four (4) promissory notes, as follows: One dated June 4, 1875, for the sum of $21.24, payable on demand, with interest; one dated on the 4th September, 1875, for the sum of $1,028.40, payable ninety days after date, with interest until paid at eight per centum (8 p. c.) per annum; one

dated on the 10th September, 1875, for the sum of $37 16/100, payable on demand, with interest at eight per centum (8 p. c.) per annum until paid; and one dated on the 10th Septem-
7 ber, 1875, for the sum of $1,084.81, payable four months after date, with interest from date until paid at the rate of ten per centum (10 per cent.) per annum; all which said indebtedness said Frances J. Dodge declared was chargeable to her sole, separate estate, upon the faith of which it was incurred, it having been represented to the said plaintiff that her intention to fully secure the same by a proper conveyance in trust had been from time to time before her death prevented by her physical condition. There was also due said plaintiff, an open account at the time of said death, the sum of $120.10, for groceries and articles of food furnished as aforesaid, upon all which said notes and said open account no payments have been made except what is hereinafter alleged & shown.

7th. That by deed of trust dated on the 28th September,
8 1874, and recorded among said land records, said Francis Dodge individually, & as trustee for said Frances J. Dodge, she joining therein, conveyed all of said lot No. 3 aforesaid in square No. 222 to defendants Hyde and Matthews to secure a note in favor of defendant George W. Riggs, treasurer as aforesaid, for $5,000 (dated on the 28th September, 1874, and payable 5 years after date, with interest from date until paid at the rate of ten per centum (10 per cent.) per annum, interest payable semi-annually, as will appear from said deed of trust recorded in liber No. 758, at pages 404, &c., of the said records.) That by another deed of trust dated on the 26th September, 1874, & recorded among said records in liber No. 765, p. 14, &c., defendants William Chapman, Frances Dodge, Francis Dodge, trustee, said Francis J. Dodge, defendants Henry H. Dodge & wife, John J. Beall & wife, said Henry H. Dodge, & J. Thomas Davis, as trustees, & others conveyed all said lots numbered one (1) and two (2), in square numbered 222, in said city, to defendants Hyde & Matthews, to secure to said Riggs, treasurer as afore-
9 said, a note of $3,000 made by said Frances J. Dodge, & two (2) notes of $1,500 each, one made to said treasurer by said Henry H. Dodge, & one made to said treasurer by said Elizabeth D. Beall, all said notes bearing date on the 26th September, 1874, and payable five (5) years after date, with interest from date until paid at the rate of ten per centum (10 per cent.) per annum, interest payable semi-annually, upon which said notes thus made & secured by said Frances J. Dodge a large amount of interest (to said plaintiff unknown) is now due and unpaid.

8th. That the said Frances J. Dodge departed this life on or about the 25th January, 1876, leaving as children surviving her, the defendants, Ella S. Dodge, Maggie D. Addison, who had intermarried with said Watkins Addison, Junior, and Forrest Dodge, who is an infant aged about 20 years; that by her last will and testament dated October 21st, 1858, and codicil thereto dated September 17th, 1873, which said will and codicil were admitted to probate
10 by this court in special term for probate business on the 29th February, 1876, and are recorded in Will Book XV, at pages

291, &c., of the records of said court, she claiming to do so in pursuance of the marriage settlement duly recorded as hereinbefore recited (in paragraph 3), did devise all her real estate and other property to said Frances Dodge in trust for her children, Ella S. Dodge and Forrest Dodge, according to certain limitations and powers in said will as affected by said codicil contained, which said will and codicil said plaintiff prays to be allowed to exhibit and read to the court as a part of this bill of complaint.

9. That in the matter of the estate of said Frances J. Dodge letters testamentary were, on the 28th March, 1876, by said court sitting for probate business, granted and issued to the said Francis Dodge upon the estate of said decedent; that said executor did, on the 9th May, 1876, file an inventory of said personal estate,
11 the same having been valued at the sum of $922.80; that said executor, on the 9th June, 1877, filed his first and final account which was duly passed on the 12 June, 1877, in which a distribution of .0443 on each dollar by way of dividend was made to the creditors of said decedent; said plaintiff, upon his claims amounting with interest to the sum of $2,634.97, receiving a dividend of $117.00, which said distribution was in exhaustion of the personal estate of said decedent.

10th. Said plaintiff is advised that, by reason of the premises, he, and all other creditors of said Frances J. Dodge, whose debts were by her intended to be chargeable upon her sole & separate estate, are entitled to have the interest of the said decedent in all real estate of which she died seized, or any one to her use decreed to be chargeable with said indebtedness, sold for the payment thereof, under the decree of this honorable court.

Prayers.

1. That the said Frances Dodge, executor as aforesaid, may
12 set forth an account of the personal estate of said decedent and of the disposition thereof.

2d. That the other defendants, the children of said decedent, & also the co-tenants therewith, and the trustees for said Elizabeth D. Beall, may discover their undivided share of or interest in any and all real estate held by them with her or any one for her use.

3d. That an account may be taken of what is due and coming to the said George W. Riggs, treasurer, on account of said notes & deeds of trust securing the same, and of all taxes and assessments due on all said real estate chargeable to the said decedent.

4th. That the interest of said decedent, Frances J. Dodge, in real estate in the District of Columbia may be ascertained under a proper inquiry to be made therefor.

5th. That an account may be taken under the direction of this court of plaintiff's debt, and also of the debts of said dece-
13 dent, Francis J. Dodge, properly chargeable upon said real estate, & due such creditors as may come in and contribute to the expenses of this suit.

6th. That the aforesaid real estate, or so much thereof as may be necessary for the purpose, may be decreed to be sold for the payment

of plaintiff's debt & such others as may be found to be chargeable thereon.

7th. That, for the purposes aforesaid, all necessary accounts may be taken, inquiries made, & directions given.

8th. That plaintiff may have such further or other relief in the premises as the nature of the case may require.

To which end the plaintiff prays for process against the defendants, Frances Dodge, William Chapman, Henry H. Dodge, John J. Beall, Elizabeth D. Beall, J. Thomas Davis, Ella S. Dodge, Watkins Addison, Junior, Maggie D. Addison, Anthony Hyde, Charles M. Matthews, George W. Riggs, all adult-, and proper process against Forrest Dodge, infant, requiring them to appear and answer the exigency of the bill.

THOMAS KNOWLES.

14, 15, & 16 The defendants to this bill of complaint are Frances Dodge, William Chapman, Henry H. Dodge, John J. Beall, Elizabeth D. Beall, J. Thomas Davis, Ella S. Dodge, Watkins Addison, Junior, Maggie D. Dodge, Forrest Dodge, Anthony Hyde, Charles M. Matthews, George W. Riggs.

C. M. MATTHEWS,
Sol'r for Pl'ff.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Thomas Knowles, do solemnly swear that I have heard read the bill by me subscribed, & know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and as stated therein upon information and belief, I believe to be true.

THOMAS KNOWLES.

Sworn to and subscribed before me, this seventeenth day of December, A. D. 1878.

[SEAL.] MAYHEW PLATER,
Notary Public.

17 *Petition of Charles D. Pearson to be Admitted as Complainant. Filed Mar.* 28, 1879.

In the Supreme Court of the District of Columbia, this — day of March, 1879.

THOMAS KNOWLES
vs.
FRANCES DODGE *et al.* } In Equity, No. 6561.

Your petitioner, Charles D. Pearson, respectfully represents that he is a citizen of Indianapolis, Indiana, and that Mrs. Frances J. Dodge being indebted to your petitioner in the sum of five hundred dollars for medical services furnished her at her request, Mrs. Frances J. Dodge and Thomas Dodge, trustee, for and in consideration of said indebtedness, did, on July 19, 1875, execute and deliver their promissory note to your petitioner for the sum of five hundred dol-

lars, payable ninety days after date, with interest until paid. Therefore your petitioner being a creditor of Mrs. Frances J. Dodge and Frances Dodge, trustee, respectfully prays the court that he be admitted as a complainant in this cause, hereby offering to contribute his proper share of the expenses of the same.

T. T. & H. B. CRITTENDEN,
Sol. for Chas. D. Pearson.

18 *Answer of Defendants Hyde, Matthews, & Riggs. Filed Mar. 31, 1879.*

In the Supreme Court of the District of Columbia, the 31st day of March, 1879. In Equity.

THOMAS KNOWLES, Plaintiff,
vs.
ANTHONY HYDE, CHARLES M. MATTHEWS, GEORGE W. RIGGS, *et al.*, Defendants.
No. 6561. Docket 19.

The joint and separate answer of the defendants, Anthony Hyde, Charles M. Matthews, and George W. Riggs, to the bill of complaint against them and others by the plaintiff exhibited.

These defendants admit the allegations of said bill of complaint in its seventh (7th) paragraph contained, and state that there is due from the said Frances J. Dodge, under the deed of trust first therein recited, the sum of five thousand dollars ($5,000) and interest thereon at the rate of ten per centum (10 per centum) per annum until paid, from the twenty-eighth day of December, A. D. 1875; and that there
19 is due from the said Frances J. Dodge under the deed of trust secondly therein recited, the sum of three thousand dollars ($3,000) and interest thereon at the rate of ten per centum (10 per centum) per annum until paid, from the twenty-sixth day of September, A. D. 1875.

ANTH. HYDE.
CHARLES M. MATTHEWS.
GEO. W. RIGGS.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared Anthony Hyde, Charles M. Matthews, & George W. Riggs, and made oath upon the Holy Evangely of Almighty God that they had read the aforegoing answer by them subscribed, and know the contents thereof, and that the facts therein stated of their own knowledge were true, and as stated from information and belief they believe to be true.

ANTH. HYDE.
CHARLES M. MATTHEWS.
GEO. W. RIGGS.

20 Sworn to & subscribed before me, a notary public for the District of Columbia, this 31st day of March, 1879.

[SEAL.] D. RITTENHOUSE,
Notary Public.

21 *Subpœna.*

In the Supreme Court of the District of Columbia, Dec. 17, 1878.

THOMAS KNOWLES, Complainant,
against
F. DODGE *et al.*, Defendant-. } No. 6561. Equity Docket.

The President of the United States to Frances, Henry H., Ella S., Forrest Dodge, J. Thomas Davis, Anthony Hyde, William Chapman, J. J. & Elizabeth D. Beall, Watkins, Jr., and Maggie D. Addison, Charles M. Matthews, George W. Riggs, defendants:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the original bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness— D. K. CARTTER, *Chief Justice.*
R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR., *Ass't Clerk.*

MEMORANDUM.—That the defendant- herewith served is to
22 enter their appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's Return.

Summoned Frances, Henry H., Ella S., and Forrest Dodge, J. Thomas Davis, J. J. & Elizabeth D. Beall, Watkins, Jr., and Maggie D. Addison,
May 14, 1879.

F. DOUGLASS, *Marshal.*

23 *Answer of Defendant, J. Thomas Davis. Filed Jul.* 1, 1879.

In the Supreme Court of the District of Columbia.

THOMAS KNOWLES
vs.
FRANCES DODGE *et al.* } Equity. No. 6561.

The answer of the defendant, J. Thomas Davis.

This defendant, answering to so much of the bill of complaint as he is advised is necessary, says: That he and the defendant, Henry H. Dodge, are surviving trustees under a certain deed of trust from John J. Beall and Elizabeth Dodge, made in contemplation of their marriage on the 12 June, 1862, and recorded in liber J. A. S. 223, folio 37; and that, as trustee under said deed of trust, he joined in the execution of the deed to the defendants, Hyde and Matthews, recorded in liber 765, folio 14. In regard to the other allegations in said bill contained he knows nothing; and having fully answered he prays to be hence dismissed, with his reasonable costs.

J. THOMAS DAVIS.

24 GORDON & GORDON,
Solicitors for Defendant.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true; and that the facts therein stated upon information and belief I believe to be true.

J. THOS. DAVIS.

Sworn to and subscribed before me, this twenty-sixth day of June, A. D. 1879.

[SEAL.] JOSEPH W. DAVIS,
Notary Public.

25 *Answer of Defendants, Ella S. Dodge, Watkins Addison, Jr., and Maggie D. Addison. Filed Jul.* 1, 1879.

In the Supreme Court of the District of Columbia.

THOMAS KNOWLES
vs.
FRANCIS DODGE *et al.* } Equity. No. 6561.

The answer of the defendants, Ella S. Dodge, Watkins Addison, Jr., and Maggie D. Addison, his wife.

These defendants say, in answer to the bill of complaint—

1. They admit the allegation in the first paragraph of the bill.

2. They admit the allegation in the second paragraph of the bill.

3. In answer to the third paragraph of the bill they say that Francis J. Chapman, on the 22 January, 1852, in contemplation of marriage with the defendant, Francis Dodge, and being desirous that the said Frances Dodge should be trustee of her estate, in the event of said marriage, and hold the same for her separate use,

26 upon the terms and conditions and with the power and authority and subject to the limitations and for the trusts hereinafter set forth and declared, of and concerning the same, and for that purpose, and with that intent only, by deed recorded in liber J. A. S., No. 36, folio 452, of the land records for the District of Columbia, conveyed unto the said Francis Dodge, and his heirs, all the estate, real and personal, in possession, reversion, or expectancy of her, the said Frances J. Chapman, or to which she was entitled at law or in equity. To have and to hold, after the solemnization of said marriage, in trust for the sole and separate use and benefit of the said Frances J. Chapman during her natural life, and so as that *that* same shall not be liable for the debts of the said Francis Dodge, with power in the said Francis Dodge, at the request in writing of the said Frances, executed before two witnesses, to lease or make absolute sale of the real estate, and execute conveyances for the same, and collect the proceeds of such sales, and reinvest the same in his name,

27 as trustee for said Frances, in such manner as she may approve, and hold the said investments for the same trusts as are in said deed declared concerning the original trust estate, and also with power in said Frances, notwithstanding her coverture, to devise and dispose of her estate by last will and testament, as will appear from said deed, which these defendants pray may be taken

as part of this answer. That the said contemplated marriage took place; and further, that at the date of said deed, the said Frances J. Chapman was seized in fee of all of lot three (3), in Davidson's subdivision of square two hundred and twenty-two (222), in the city of Washington, in the District of Columbia; of an undivided one-fifth interest in lot 2, in the subdivision of said square, and an undivided one-fifth interest in lots forty-three (43) and forty-four (44), in Beall's Addition to the city of Georgetown, in said District, all of which became subject to the provisions and trusts in said deed contained.

28 4. They admit the allegations contained in the fourth paragraph of the bill.

5. They admit that by deed, dated on the 26th April, 1876, and recorded in liber E. C. E. 20, fol. 285, William Chapman and others conveyed three undivided fourths of lots forty-three and forty-four, in Beall's Addition to Georgetown, unto Francis Dodge and his heirs, to have and to hold upon the uses and for the trusts as set forth in the last will and testament of Edward Chapman.

6. They do not admit any of the allegations in the 6th paragraph of the bill contained, and call for strict proof of the same. They deny that the said Francis Dodge, as trustee for Frances J. Dodge, acting under the provisions of the deed of trust of 22 January, 1852, was authorized to sign and deliver said notes; and, further, they deny that said notes are a charge upon any of the real estate mentioned in the bill of complaint, whether held under the trusts

29 deeds above referred to or otherwise howsoever; and they further deny that such indebtedness was incurred in reference to the separate estate of said Frances J. Dodge, or that she had promised to secure the payment of the same. They further deny that at the time said notes are alleged to have been made that said Francis Dodge was insolvent or unable to pay his just debts.

7. They neither admit nor deny the allegations contained in the seventh paragraph of the bill, having no personal knowledge in regard thereto.

8. They admit the allegations in the 8th paragraph of the bill contained.

9. They believe the allegations contained in the 9th paragraph of the bill to be true.

10. They deny that the estate of the said Frances J. Dodge can in any way be charged with the payment of the debts referred to in the bill of complaint, for the reason that under the mar-

30 riage settlement of 22d January, 1852, the estate of the said Frances J. Chapman was conveyed upon certain trusts, none of which trusts empowered her to charge said estate with her separate debts. That the conveyance to the said Francis' Dodge of three undivided fourths of lots 43 and 44, Beall's Addition to Georgetown, conveyed the same "upon the uses and trusts as set forth in the said last will and testament of Edward Chapman;" and further, that said interest in said lots was purchased, and the improvements made thereon, by the expenditure of that portion of the estate of

Edward Chapman, devised for the use of said Frances J. Dodge and her children, which devise was to J. Carter Marbury, upon trust to invest the same in good and reliable stocks, and collect the interest thereon, and pay the same to Frances J. Dodge for life, and after her death divide the same equally between such of her children as should be living, as will appear from reference to the said
31 will, which is prayed to be taken as part of this answer; and further, that by a decree of this court passed in equity cause No. 916, the said Francis Dodge was substituted as trustee under said will in the place of said J. Carter Marbury, whereby the said devised estate came into the hands of said Francis Dodge, and was invested as above set forth. And further they aver that the said Frances J. Dodge, being a married woman living with her husband, was not, and her estate cannot at law or in equity, be responsible for necessaries furnished to the family of her said husband.

11. They say that so far as they know the said Frances I. Dodge, at the time of her death, had no interest in any real estate in the District of Columbia other than has been set out in this answer.

ELLA S. DODGE
MAGGIE D. ADDISON.

GORDON & GORDON,
Solicitors for Defendants.

We solemnly swear that we have read the answer by us
32 subscribed and know the contents thereof, and that the facts therein stated of our personal knowledge are true, and that the facts therein stated upon information and belief we believe to be true.

ELLA S. DODGE.
MAGGIE D. ADDISON.

Sworn & subscribed to, this thirteenth day of June, A. D. 1879.
[SEAL.] J. L. PARKHURST,
Notary Public.

33 *Answer of Defendant, Henry H. Dodge. Filed Jul.* 1, 1879.

In the Supreme Court of the District of Columbia.

THOMAS KNOWLES
v.
FRANCES DODGE *et al.* } In Equity. No. 6561.

The answer of the defendant, Henry H. Dodge.

This defendant, answering to so much of the bill of complaint as he is advised is necessary, admits that he joined in the execution of the deed of trust to the defendants Hyde and Matthews, in liber 765, folio 14, both in his own right and as surviving trustee with J. Thomas Davis, under deed in J. A. S. 223, fol. 37; and further, that he has no interest as tenant in common with the heirs of Frances I. Dodge, deceased, in any ground in the District of Columbia other than in lots one (1) and two (2), in subdivision of square two hun-

dred and twenty-two (222), in city of Washington, D. C., his interest in each of said lots being an undivided sixth part.

34 And this defendant protests against the sale of any interest in said lots of ground at this time, for the reason that any such sale would be greatly to his injury and loss.

HENRY H. DODGE.

GORDON & GORDON,
Solicitors for Defendant-.

I do solemnly swear that I have read the answer by me subscribed and know the contents therof, and that the facts therein stated upon my personal knowledge are true, and the facts therein stated upon information & belief I believe to be true.

HENRY H. DODGE.

Sworn to & subscribed before me this 26th day of June A. D. 1879.
[SEAL.] JOHN W. CARSON,
Notary Public.

35 *Answer of the Defendants, John J. Beall & Elizabeth Beall. Filed Jul.* 1, 1879.

In the Supreme Court of the District of Columbia.

THOMAS KNOWLES
vs.
FRANCES DODGE *et al.* } Equity. No. 6561.

The answer of the defendants, John J. Beall and Elizabeth Beall, his wife.

These defendants, answering to so much of the bill of complaint as they are advised is necessary, admit that they joined in the execution of the deed of trust to the defendants Hyde and Matthews in liber 765, folio 14; and the said Elizabeth Beall, further answering, says that she has no interest as tenant in common with the heirs of Frances J. Dodge, deceased, in any land in the District of Columbia, other than in lots one (1) and two (2), in the subdivision of square two hundred and twenty-two (222), in the city of Washington, D. C., and that her interest in each of said lots is an undivided one-sixth part.

36 And the said Elizabeth Beall protests against the sale of any interest in said lots of ground at this time, for the reason that any such sale would be greatly to her injury and loss.

JNO. J. BEALL.
ELIZABETH D. BEALL.

GORDON & GORDON,
Solicitors for Defendants.

We do solemnly swear that we have read the answer by us subscribed and know the contents thereof, and that the facts therein stated upon our personal knowledge are true, and that the facts therein stated upon information and belief we believe to be true.

JNO. J. BEALL.
ELIZABETH D. BEALL.

Sworn to and subscribed before me, this twenty-sixth day of June, A. D. 1879.

[SEAL.] J. L. PARKHURST,
Notary Public.

37 *Order Pro Confesso vs. F. Dodge. Filed Jul.* 12, 1879.
No. 6561. Docket 19.

In the Supreme Court of the District of Columbia.

THOMAS KNOWLES
vs.
EMILY DODGE *et al.* } 6561. In Equity.

It appearing to the court that the defendant, Frances Dodge, though served with process on the 14th May, 1879, hath not made answer to the bill in this case filed, it is by the court, this 12th July, 1879, ordered that said bill be taken for confessed against said defendant, Frances Dodge, as sued in his own right, as executor & trustee, & as trustee.

A. B. HAGNER,
Asso. Justice.

38 *Order for Appearance of Absent Defendant. Filed Jul.* 12, 1879.

In the Supreme Court of the District of Columbia, the 12th day of July, 1879.

THOMAS KNOWLES
vs.
FRANCES DODGE *et al.* } No. 6561. Equity Docket 19.

On motion of the plaintiff, by Mr. Matthews, his solicitor, it is ordered that the defendant, William Chapman, cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the court: A. B. HAGNER, *Justice, &c*
12th July, 1879.

39 *Proof of Publication. Filed Sept.* 22, 1879.

WASHINGTON, D. C., *July* 29, 1879.

Mr. C. M. Matthews, Solicitor, to Washington Law Reporter, Dr., 631 F Street.

July 14, 1879. To pub. abs. def't's notice, Knowles *vs* Dodge *et al.* $4 00

Received payment,

JOHN L. GINCK & CO.

UNITED STATES OF AMERICA
District of Columbia, } *ss.*

On this 29th day of July, A. D. 1879, personally appeared before

me, the undersigned, a notary public in and for the District aforesaid, John L. Ginck, being personally well known to me, and made oath in due form of law to the following statement, viz: That affiliant is one of the publishers of the "Washington Law Reporter," a newspaper published in the city of Washington, D. C.; that the annexed notice was published in said "Washington Law Reporter" once a week for three successive weeks, as follows: July 14, 21, and 28, 1879.

JOHN L. GINCK.

40 Sworn and subscribed before me, the day and year above written.

[SEAL.] JAMES T. POWELL,
Notary Public.

Advertisement.

In the Supreme Court of the District of Columbia, the 12th day of July, 1879.

THOMAS KNOWLES
v.
FRANCIS DODGE *et al.* } No. 6561. Eq. Doc. 19.

On motion of the plaintiff, by Mr. Matthews, his solicitor, it is ordered that the defendant, William Chapman, cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day, otherwise the cause will be proceeded with as in case of default.

By the court: A. B. HAGNER, *Justice, &c.*

True copy. Test: R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clerk.

C. M. MATTHEWS, *Solicitor.*

41 *Order Appointing Judson T. Cull, Guardian ad Litem for Infant Defendant, Forrest Dodge. Filed Sep.* 8, 1879.

In the Supreme Court of the District of Columbia.

THOMAS KNOWLES
v.
FRANCES DODGE *et al.* } Equity. No. 6561.

The infant defendant, Forrest Dodge, being personally present in court, it is, this 8th day of September, A. D. 1879, ordered by the court that Judson T. Cull be, and he is hereby, appointed guardian *ad litem* to make answer for the said infant defendant, the said Forrest Dodge being in court.

By the court: MACARTHUR, *Justice.*

42 *Answer of Guardian ad Litem. Filed Sep.* 3, 1879.

In the Supreme Court of the District of Columbia, this — day of September, A. D. 1879.

THOMAS KNOWLES
v.
FRANCES DODGE *et al.* } Eq. 6561.

The answer of Forrest Dodge, an infant, under the age of twenty-one years, by Judson T. Cull, his guardian, to the bill of complaint of Thomas Knowles against him in equity exhibited.

This defendant cannot admit any of the matters and things alleged in the said bill, and being an infant of tender years submits his rights to the protection of this court.

JUDSON T. CULL,
Guardian ad Litem for Forrest Dodge.

I do solemnly swear that the matters and things stated in the foregoing answer are true, to the best of my knowledge and belief.

JUDSON T. CULL.

Subscribed and sworn to before me, Sep. 8, 1879.

R. J. MEIGS,
Clerk S. C. D. C.,
By R. J. MEIGS, JR.,
Ass't Clerk.

43 *Order Pro Confesso vs. William Chapman. Filed Sep.* 22, 1879.

In the Supreme Court of the District of Columbia, the — day of September, 1879.

THOMAS KNOWLES
v.
FRANCIS DODGE *et al.* } In Equity. No. 6561. Docket 19.

It appearing to the court that due publication hath been made of the order heretofore, on the 12th July, 1879, passed in this cause, requiring the defendant, William Chapman, to cause his appearance to be herein entered on or before the first rule day, occurring forty days after the date of said order; & it further appearing that compliance hath not been had by said defendant Chapman with said order, it is, on motion of plaintiff's solicitor, this 22d day of September, 1879, ordered that the bill in this cause filed shall be, and is hereby taken for, confessed against said defendant, William Chapman.

By the court: MACARTHUR, *Justice.*

44 *Replication. Filed Sep.* 23, 1879

In the Supreme Court of the District of Columbia, the 23d September, A. D. 1879.

THOMAS KNOWLES
v.
FRANCES DODGE *et al.* } In Equity. No. 6561. Docket 19.

The plaintiff hereby joins issue upon the bill, the answers thereto

filed, the orders therein granted to take the bill for confessed, and the testimony and proofs to be hereinafter introduced.

C. M. MATTHEWS,
For Plaintiff.

45 *Decree Setting Aside Pro Confesso against W. Chapman, with Leave to File Answer. Filed Oct. 20, 1879.*

In the Supreme Court of the District of Columbia.

THOMAS KNOWLES
v.
FRANCIS DODGE *et al.* } Equity. 6561.

It is, this twentieth day of October, A. D. 1879, ordered by the court that the decree *pro confesso* against the defendant, William Chapman, passed on the twenty-second day of September, A. D. 1879, be, and the same is hereby, set aside; and it is further ordered that the said defendant, William Chapman, have leave to file his answer within two days.

By the court: MACARTHUR, *Justice.*

I consent to above order.

C. M. MATTHEWS, *For Pl'ff.*

46 *Answer of Defendant, William Chapman. Filed Oct. 20, 1879.*

In the Supreme Court of the District of Columbia.

THOMAS KNOWLES
v.
FRANCES DODGE & *als.* } Equity. 6561.

The answer of the defendant, William Chapman, to the bill of complaint.

The defendant, answering to so much of the bill of complaint as he is advised is necessary, admits that he joined in the execution of the deed of trust to the defendants, Hyde and Matthews, in liber 765, folio 14; and further, that he has no interest as tenant in common with the heirs of Frances I. Dodge, deceased, in any ground in the District of Columbia other than in lots one (1) and two (2), in subdivision of square two hundred and twenty-two (222) in the city of Washington, D. C., his interest in each of said lots being an undivided one-third part. And this defendant protests against the sale of any interest in said lots of ground at this time, for the
47 reason that any such sale would be greatly to his injury and loss.

WM. CHAPMAN.

GORDON & GORDON,
Att'ys for Defendant.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

WM. CHAPMAN.

Sworn to and subscribed before me, this thirtieth day of October, A. D. 1879.

[SEAL.] J. L. PARKHURST,
Notary Public.

48 *Replication to Chapman's Answer. Filed Nov.* 13, 1879.

In the Supreme Court of the D. C. In Equity.

THOMAS KNOWLES
vs.
FRANCIS DODGE *et al.* } No. 6561. Docket 19.

The plaintiff joins issue with defendant, William Chapman, upon the bill, & said defendant Chapman answer thereto & the proofs.

C. M. MATTHEWS, *For Pl'ff.*

49 *Depositions for Plaintiff and Defendants, with Exhibits. Filed Nov.* 13, 1879.

In the Supreme Court of the District of Columbia, the 17th day of October, 1879.

THOMAS KNOWLES, Pl'ff,
vs.
FRANCES DODGE *et al.*, D'f'd't. } Eq. 6561. Doc. 19.

Depositions for plaintiff and defendants.

Depositions begun and taken at the office of the examiner, 325 4½ street, Washington city, D. C., in behalf of the plaintiff, Messrs. Matthews and Gordon, respective solicitors, being present, in pursuant of notice.

THOMAS KNOWLES, the plaintiff, having been duly sworn, deposes and says, in answer to interrogatories propounded by C. M. MATTHEWS, Esq.:

My name is Thomas Knowles. I reside in this District. I am the plaintiff in this case.

I am in the retail grocery business, in Georgetown; have
50 been in that business about 30 years. I am the holder of the notes shown me by Mr. Matthews. They are four in number. The first, dated June 4th, 1875; it is for $21.24, and payable on demand, with interest.

The second is dated Sept. 4, 1875, it is for $1,028.40, payable ninety days after date, with interest at 8 per cent. until paid.

The third is dated Sept. 10, 1875, it is for $37.06, payable on demand, with interest at 8 per cent. until paid.

The fourth is dated Sept. 10, 1875, it is for $1,084.81, payable four months after date, with interest at 10 per cent. until paid.

All these notes are payable to my order, and are signed "F. Dodge, trustee for Fannie I. Dodge."

They were received by me in settlement of an account for a grocery bill, and a renewal of former notes.

The groceries were furnished to Mrs. Fannie I. Dodge. They were furnished to the credit of Mrs. Fannie I. Dodge. Those notes were received in part renewal of other notes, and a running
51 grocery account. The two notes handed me by Mr. Matthews were the notes for which the two larger notes above referred to were given in renewal.

(These two old notes marked "Pl'ff A," & "Pl'ff B," are herewith filed by Mr. Matthews.)

The one signed F. Dodge, trustee for Fannie I. Dodge. The first note in this transaction was given Sept. 28, 1870, and the last Sept. 10th, 1875. All the notes included in the statement handed me were signed F. Dodge, trustee for Fannie I. Dodge, were made to my order, and for the amounts specified in the statement. I have not those notes in my possession except the two already exhibited and filed.

I delivered the other notes to Mr. Dodge.

(Wm. A. Gordon, Esq., acknowledged that Mr. Dodge received notice to produce the back notes mentioned in this statement.)

(This statement is herewith filed by C. M. Matthews, Esq., and marked Exhibit Pl'ff C.)

52 Mrs. Fannie I. Dodge is also indebted to me for groceries furnished her by me in the sum of $120.10. They were furnished upon her faith and credit.

These groceries were delivered at her dwelling-house in Georgetown. They were ordered by Mr. Dodge and the servants from time to time.

Occasionally Mrs. Dodge was in the store and ordered some. I have received $117 upon this amount from Mr. Dodge, as executor of Mrs. Fannie I. Dodge. It was paid June 18, 1877.

Q. Why were these articles furnished upon the credit of Mrs. Dodge?

A. Because I expected Mrs. Dodge to pay me for them.

Q. Did you expect Mr. Dodge to pay for them?

A. No, sir.

Q. Why not, sir?

A. Because Mrs. Dodge was looked upon as being worth means, and Mr. Dodge not

53 Q. Did Mr. Dodge ever offer to pay you this account, or any portion of it, or give his own note or notes for any portion of it?

A. No, sir. He has handed me money, which has been placed to the credit of the account.

Q. Did he in his dealings in this matter indicate for whom he was acting?

A. He has repeatedly told me that Mrs. Dodge had plenty of property to pay her debts, and would.

Q. Did he ever promise you security from Mrs. Dodge for this indebtedness?

A. Yes, sir; security upon her real estate.

Q. Did you ever get it?

A. I did not get it, owing to Mrs. Dodge's death.

(Copies of the notes now held by the plaintiff are to be filed by C. M. Matthews, Esq., pl'ff's solicitor.)

54 Cross-examination by WM. A. GORDON, Esq., def'd'ts' solicitor:

I wrote a note to Mr. Dodge requesting real estate security for my debt.

I don't recollect the date. I got a reply from Mr. Dodge that as soon as Mrs. Dodge got better I should have it.

I did not get a promise from anybody else that I should have real estate security.

I wrote Mr. Dodge several notes about it.

I don't recollect when I asked for the real security. It was some months before Mrs. Dodge died.

When I asked Mr. Dodge for real estate security, his reply to me by letter indicates what he stated.

He intimated to me several times that in a very short time I should have it. He did not seem inclined to hurry it up.

Mrs. Dodge never personally promised to give me real
55 estate security. I did not see her during the latter part of the transaction.

The basis upon which the notes in the statement were made was that the amount was increased by the running account; frequently I would give Mr. Dodge my check to pay the old note, and he would give me a new note, adding the running account to it.

Cross-examination closed.

Redirect examination by C. M. MATTHEWS, Esq., pl'ff's solicitor:

I wrote to Mr. Dodge in regard to the security.

The reason of the increase in the amount of these notes was on account of the renewal in the amount of the grocery bill, and the fact that the same was not paid.

Mr. Dodge alludes to the note for $1,084.81 in his letter.

I think I asked for the real estate security personally a
56 few months before Mrs. Dodge's death, and subsequently wrote him, not to her death, but subsequent to my personal interview.

THO'S KNOWLES.

Sworn to and subscribed before me, this 17th day of October, 1879.

B G. LOVEJOY, *Examiner.*

FRANCES DODGE, being duly sworn, deposes and says:

My name is Frances Dodge; I reside in this district; I am one of the defendants; I was the husband of Mrs. Fanny I. Dodge; I was also the grantee in the ante-nuptial settlement made by her and me,

and which is recorded in liber J. A. S. No. 36, folio 452, and cited in the 3d paragraph of the bill in this cause. Under that instrument I became seized of certain real estate to her use.

Q. Did you not become entitled to personal property to her use under that instrument?

A. Yes, sir.

57 Q. Did she die possessed of personal property?

A. Nothing but the furniture in her house.

Q. What became of that furniture?

A. It was returned to the orphan's court as her personal effects.

Q. In what proceeding?

A. In the settlement of her estate under her will.

Q. How was that personal property acquired?

A. Some was left by her mother, the rest bought by her, from time to time, as she required it.

(Mr. Gordon, solicitor for def'd'ts, desires examiner to note that he admits the statement of interest in real estate in the 3d and 4th and 5th paragraphs of the bill in this cause.)

In 1870 I was a clerk in the National Insurance office. In

58 1872 I was in the same occupation; the same in 1873 and 1874. In 1875 I was unoccupied until December, when I was in the 1st auditor's office of the Treasury, where I remained until the 1st October, 1877, since when I have been collector of the port of Georgetown.

I have seen the notes which Mr. Knowles holds, and in regard to which he testified. They are all signed by me, F. Dodge, trustee for Fannie I. Dodge, and were given by me.

They were given in renewal of other notes and interest; the open account was always added in every sixty or ninety days.

They were signed F. Dodge, trustee of Fannie I. Dodge, because I had no property. I had no property to give a note upon; I was bankrupt. They were to be chargeable to her. They would not have been signed by me as trustee, unless it was for her and upon her responsibility. I never accompanied the delivery of those notes with the declaration that they were intended to bind her real

59 estate, not that I can remember.

I gave other persons than Mr. Knowles notes similarly signed, and for debts due by Mrs. Dodge. I gave Mr. Benjamin Miller, of Georgetown, a note similarly signed.

I have no recollection of accompanying the delivery of this note with the declaration that it would bind her real estate.

These notes were given with the knowledge of my wife, under her general authority.

The amounts do not represent any indebtedness contracted by me.

The articles furnished by Mr. Knowles were to eat. The family consumed them.

My wife's family. Her children and servants comprised that family. These articles were purchased by her and on her credit.

She made the exclusive arrangements for their purchase through me, as trustee.

I was an inmate of the family during this time; my salary
60 furnished the marketing, and I gave everything I had to the family. I could not support the whole family. She furnished medicines, wood, and coal.

The indebtedness to Emily Dodge was loaned to pay taxes.

She also paid medical services rendered different members of the family; the butcher in part; and all the other expenses, as qualified by my statement given above.

I told Mr. Knowles verbally that Mrs. Dodge was ill with paralysis; that she could not be spoken to on business; that when she got well I would get her to give him real estate security if I could. I afterwards wrote her the note which is shown me. This note should bear date '76, instead of '75.

(The note referred to is herewith filed, marked Ex. Pl'ff D.)

The promise given by me was in connection with the notes held by Mr Knowles.

61 The debt returned in the administration account as due Wm. Chapman represents a note of $3,000.00 and accrued interest, given to him by Mrs. F. I. Dodge in her own name for his interest in lots 43 & 44, Be-ll's Addition to Georgetown.

By signing a note I could not make it binding on real estate. These notes were not intended by me to be binding upon her real estate any more than suit at law would make them so. I only meant that she had real estate enough to secure any debt she was making.

I don't know under whose instructions the answer of Ella S. Dodge and Maggie D. Addison were prepared in this case; I myself had nothing to do with it.

Their affidavits were made to their answers before J. L. Parkhurst, notary public, it seems from looking at the answers. Mr. Parkhurst is deputy collector of the port and notary public. His office is in the custom-house building, Georgetown.

62 My office is in the same place. My daughter Ella is subject to epileptic fits. I don't consider her mental condition impaired by those fits, except when she has a violent attack, when she is sick for two or three days. She is not as subject to them now as she was years ago. She is now resting under the delusion that she is to be married to a former acquaintance, who has a wife. I am sorry to say she is childish in that respect.

She has hard sense in some respects and is foolish and childish in others. I shouldn't say she was insane. My daughter, Maggie D. Addison, is the wife of Watkins Addison.

She and her husband do not live together. They haven't for several years. He deserted her. She is supported by me. These daughters do not live with me. There is no room for them where I live. They live on the old homestead, lots 43 & 44.

They were members of my family at the time the articles furnished by Mr. Knowles were consumed. The money realized
63 from the deeds of trust referred to in this cause was used in taxes, &c. I cannot recollect. Mrs. Dodge spent the money

herself. Some proportion may have been used for household expenses. I, of course, have no distinct recollection about these things. My daughter Ella has not been guilty of any acts of violence towards herself or others that I know of.

(It is agreed by respective solicitors that Mr. Matthews may file certified copy of orphans' court account in the matter of Fannie I. Dodge; copies of the 4 notes testified to by the plaintiff; also copy of the statement of notes given.)

FRANCIS DODGE.

Sworn to and subscribed before me, this 17th day of October, 1879.

B. G. LOVEJOY, *Examiner.*

Adjourned to Monday, Oct. 20, 1879.

Met this Monday, Oct. 20, 1879, at one o'clock p. m., pursuant to adjournment.

Present: Messrs. Matthews and Gordon, respective solicitors.

64 WILLIAM CHAPMAN, being duly sworn, deposes and says:

My name is William Chapman; I reside in Green Bay, State of Wisconsin; I am one of the defendants named in this proceeding; I was the brother of the late Mrs. Fannie I. Dodge; I was one of the grantors in a deed dated April 26, 1867, wherein the Chapman heirs conveyed certain real estate in Georgetown to Francis Dodge, as trustee for Mrs. Fannie I. Dodge, his wife.

This deed is recorded in liber E. C. E. No. 20, fol. 285 of the Land Records of this District. My interest in that property was one-fourth (¼), and I conveyed that by this deed.

Mrs. Dodge settled with me for my interest by giving me her note; it was dated at or about the time of the conveyance; was for three thousand dollars ($3,000.00), with interest at 6 per centum.

65 I was subpoen-ed to appear here and bring this note with me. I have not got the note. It is with the administration papers, I presume. I swore to it, and sent it on here.

This note is signed by my sister, Francis I. Dodge.

I have received upon this note two hundred and six dollars and ninety-nine cents, which was paid me by the executor of my sister, Mr. Francis Dodge, her husband. Previously I had received three (3) payments of interest, I think. These payments of interest are endorsed on the note.

The only consideration of this note was the sale of this lot to my sister.

(It is hereby agreed by the respective solicitors that if the above note can be found by Mr. Matthews, a copy thereof, with the endorsements, may be filed in this cause in lieu of the original.)

WM. CHAPMAN.

Sworn to and subscribed before me, this 20th day of October, 1879.

B. G. LOVEJOY, *Examiner.*

66 CHARLES M. MATTHEWS, being duly sworn, deposes and says:

My name is Charles M. Matthews; I am solicitor for the plaintiff; shortly after the death of Mrs. Dodge I waited upon Mr. Francis Dodge, her trustee, in the interest of Mr. Thomas Knowles, the plaintiff, who had placed his claim in my hands for collection, when it was agreed between us that after the personalty had been exhausted by the administration proceedings then pending that recourse should be had to the real estate for payment of the balance of the debts. In order for the proper *peraration* of the bill to be filed, at my request he furnished me with a statement of the interest of Mrs. Dodge in the several pei-ces of real estate mentioned in the bill. After the bill was prepared, it was shown to him, in his office in the custom-house, Georgetown. By an arrangement with him the bill was filed, and at his request I procured a copy of the same,
67 with one subpœna in the case for all the defendants, he promising to secure their acknowledgement of service.

C. M. MATTHEWS.

Sworn to and subscribed before me, this 20th day of October, 1879.

B. G. LOVEJOY, *Examiner.*

Met this 12th day of November, 1879, pursuant to agreement of counsel and notice.

Present: Messrs. Matthews & Gordon.

Defendant's Depositions.

J. L. PARKHURST, being duly sworn, deposes and says:

My name is J. L. Parkhurst; I am a notary public.

(Mr. Gordon hands witness the answer of Ella S. Dodge and Maggie D. Addison, and witness says:)

That is my signature and notarial seal. These parties took that oath before me, in my official capacity.

68 I was in my office, at the custom-house, in Georgetown, when Holdsworth Gordon came in and called Mr. Dodge over to the counter, and, after some conversation, to which I paid no attention, I heard Gordon say, "Well, here's Parkhurst; he'll do it, I guess," or something to that effect, and then he said, "Mr. Parkhurst, can you go up and take the deposition of Mr. Dodge's daughters?" I said, "Yes." Then he, Mr. Gordon, said, give me a half an hour's start, and I will go up and explain the matter to them. You be there at such a time, and I'l have them ready. He named the time. It was in the afternoon, I think.

I went up to the house and took their acknowledgement.

Cross-examination by Mr. MATTHEWS:

Mr. Dodge was in the custom-house when Mr. Gordon arrived there. He was sitting at the same table with me, I think.

The conversation between Mr. Dodge and Mr. Gordon took
69 place at the counter. Mr. Dodge was on the inside and Mr. Gordon on the outside.

I do not know the subject of that conversation. I paid no attention to it.

I would hear words, but I didn't put them together at all.

I did not hear enough to connect that conversation with the paper which was afterwards acknowledged before me.

I think Mr. Gordon produced a paper during his conversation with Mr. Dodge. I am not positive about that, though.

This conversation lasted six or eight minutes.

I can't say whether, or I don't recollect whether, Mr. Gordon read or explained any paper to Mr. Dodge during their conversation.

When Mr. Gordon suggested that I should take this acknowledgement, Mr. Dodge said, "Yes;" "that's so," or something like that.

I went to the house. I saw Maggie Addison, Ella Dodge,
70 and Holdsworth Gordon, and some one else, whom I didn't know, or have forgotten, who let me in, and afterwards came down in the parlor and showed me up in Maggie's room.

Mrs. Addison was in bed, and Ella Dodge and Mr. Holdsworth Gordon were up in the room with her.

I know that Ella Dodge was reading this paper aloud to herself when I went in. And Mrs. Addison said that she had read it, and understood it as well as she could any legal document. The inference I drew was that she could not understand it very well.

There was quite a conversation between Maggie and Ella. The former said you might as well sign it for you won't understand it better than I do; and Ella said, I do understand it, and am going [to] understand before I get through with it or before I sign it, or something like that she said.

She read it to the end, and then signed it.

71 I think I did not see Mr. Dodge again that evening. The next day he asked me if I had any trouble; that is, did it take much time to go up there, or some simple question to that effect.

I don't think I've ever been paid my fee.

I have never made any attempts to collect it, not to my recollection. I never thought about collecting it until the last day or two, when Mr. Matthews asked me about it.

J. L. PARKHURST.

Sworn to and subscribed before me, this 12th day of Nov., 1879.

B. J. LOVEJOY, *Examiner.*

Mr. Gordon herewith files the will of Francis I. Dodge, marked Exhibit W. A. G., 2, and original deed from Francis I. Chapman to Frances Dodge, marked Exhibit W. A. G., 1.

Mr. Gordon closes defendants' depositions.

72 EXHIBIT W. A. G., No. 1.

Deed of Trust.

This indenture, made this twenty-second day of January, in the year eighteen hundred and fifty-two, by and between Frances I. Chapman, of Georgetown, in the District of Columbia, of the first part, and Francis Dodge, of the same town and District, of the second part: whereas a marriage is contemplated to be had and solemnized by & between the said Frances I. Chapman & the said Frances Dodge, and it is proposed mutually by said parties, in anticipation thereof, to convey & settle all the estate, real and personal, of which the said Frances I. Chapman is seized & possessed, or in anywise entitled to in law or equity, in possession, reversion, or expectancy, for the sole and separate use & benefit of the said Frances I. Chapman, & so as that the same & the income & profits thereof shall not be in anywise liable for the debts or subject to the control or contracts of her said contemplated husband, except so far as such control & contracts are consistent with the provisions contained
73 in this deed; and whereas the said Frances I. Chapman prefers and greatly desires that the said Francis Dodge shall be the trustee of her estate in the event of said marriage, and hold the same for her separate use, upon the terms and conditions & with the powers & authority, & subject to the limitations & for the trusts hereinafter set forth and declared of & concerning the same, & for that purpose, and with that intent only, the said Frances I. Chapman doth execute this indenture, which witnesseth: That the said Frances I. Chapman, in consideration of the premises and of the sum of five dollars current money to her in hand paid by the said Francis Dodge at the ensealing & delivery of these presents, the receipt of which is hereby acknowledged, hath granted, bargained, sold, aliened, transferred, made over, & assigned, & by these presents doth grant, bargain, sell, alien, transfer, make over, & assign, unto the said Francis Dodge, his heirs, executors, & administrators,
74 all & singular the estate, real & personal, in possession, reversion, or expectancy, of her the said Frances I. Chapman, or to which she, the said Frances I. Chapman, is in anywise entitled, at law or in equity, that is to say, all & singular the lots, pieces & parcels of ground lying & being in Georgetown & Washingfon city, in the District of Columbia, which were inherited by the said Frances I. Chapman from her mother, Mary Chapman, late deceased, & all the right & interest of her, the said Frances I. Chapman, therein, whether the same have been apportioned to her or yet remain to be divided & apportioned among the heirs-at-law or devisees of the said Mary Chapman; also all the interest, share, and portion of her, the said Frances I. Chapman, as one of the devisees, legatees, or heirs-at-law of her Aunt Margaret Davidson, late deceased, in the estate, real & personal, of the said Margaret Davidson; also all the interest, share, & portion, of her, the said Frances
75 I. Chapman, as one of the heirs at law of her late deceased sister, Elizabeth A. Chapman, in the estate, real & personal, of the said Elizabeth; also a certain debt, or sum of twenty-

seven hundred eighty-one dollars & thirty-eight cents, due and owing from the house or firm of F. & A. H. Dodge of Georgetown, aforesaid, for which the said Frances I. Chapman holds, at this time, four several promissory notes of the said firm, payable to her order on demand. To have & to hold the said estate, real & personal, & all the right, interest, share, & portion of the said Frances I. Chapman in & to the same, to the said Francis Dodge, his heirs, executors, & administrators, according to the nature & quality thereof, for the uses, trusts, & purposes, with the powers & authority, & subject to the limitations & restrictions hereinafter mentioned & declared of & concerning the same, that is to say, until the solemnization of the said marriage for the use and behoof of the said
76 Frances I. Chapman, her heirs, executors, administrators, & assigns; and from & after the said contemplated marriage has been solemnized, for the sole & separate use & benefit of the said Frances I. Chapman during the term of her natural life, & so as that the same, or any part thereof, or the rents, income, & profits thereof, or of any part thereof, shall not be liable for the debts of him, the said Francis Dodge, or in any way subject to his control or contracts, except so far as is consistent with the provisions of this deed.

To permit her the said Frances, by herself or her attorney, appointed by writing, under her hand, to collect & receive all the rents, interests, dividends, & annual profits, which may from time to time accrue and become payable on the said trust subject and estate, & to dispose of the same as she may see fit, for her own separate use & benefit; and if the said Frances shall by any writing under
77 her hand & seal, to be executed in the presence of, & to be attested by two witnesses, order & direct the leasing, or absolute sale of the said real estate, or of any part thereof now in her possession, or which, on the future division & partition of the real estate of said Mary Chapman, Margaret Davidson, & Elizabeth A. Chapman may be allotted to & come to her possession, then the said Francis Dodge and his heirs shall, from time to time, as so required, lease or sell the said real estate, or such part thereof as the said Frances shall in such writing direct to be leased or sold, to such person or persons, for such price or prices, for such estate or estates, & on such terms of payment as the said Frances may by such writing order, direct, & appoint, & shall collect & get in the proceeds of any such sale or sales, & shall invest the same in his name as trustee of the said Frances, in such manner as the said Frances may approve & require, & hold the said investments, when made, for
78 the same uses, trusts, and purposes, & with the like power & authority, & subject to the like limitations, as are hereinbefore declared of & concerning the original trust subject. And on the receipt of the proceeds of any & every such sale or sales, or the same being well secured to the entire satisfaction of the said Francis Dodge, he shall & may convey the premises so sold to the purchaser or purchaser- thereof, his, her, or their heirs and assignees, executors or administrators, as the case may require. And the said Frances

Dodge shall hold the said personal estate & money due to the said Frances as aforesaid on this further trust; to collect & get in the same, from time to time, as he may judge most for the advantage of the said Frances; & the said personal estate being reduced to money & in hand, to reinvest the same in his name as trustee of the said Frances, for the same uses, trusts, & purposes & with like powers as are hereinbefore mentioned & declared in regard to
79 the investment of the proceeds of sales of the real estate; and the said Francis Dodge, as trustee of the said Francis, & with her consent in writing, signed by her, shall have power, from time to time, to sell, change, vary, transfer, assign, & convey such new investments, & reinvest the money thence arising in the like manner & for the like uses & trusts before herein mentioned & declared of and concerning the original trust subject. And it shall & may be lawful for the said Frances, notwithstanding her coverture, by any will or testament to be signed, sealed, & published by her as her will or testament, to give, devise, & dispose of her said estate, real & personal, in such manner, to such person or persons, & for such estate or estates as she may see fit; and the said Frances Dodge & his heirs, executors, & administrators shall hold & dispose of the said estate, or such parts thereof as the said Frances may, by any such will or testament, give, devise, & dispose of to any person
80 or persons, for the use of such person or persons, according to the direction & appointment in such will or testament contained. And in case the said Frances shall make no last will & testament, & so far as such last will & testament may not extend, the said Francis Dodge, his heirs, executors, & administrators, shall hold the said trust subject & estate on the further following uses & trusts; that is to say—

If the said Frances shall die without issue in the lifetime of the said Francis Dodge, her husband, on leaving issue, they shall all die under the age of twenty-one years without issue, then the said Frances Dodge shall take the rents & annual income & profits of the said trust subject and estate for his own use during the term of his life; & after his death the whole of the said trust subject and estate, or such part thereof as may not have been disposed of by the last will & testament of the said Frances, shall be equally di-
81 vided among & conveyed to the children of her late deceased sister, Jane E. Dodge, share & share alike, & to their heirs forever; and if any of the said children shall have married, & died leaving issue, such issue shall stand in the place of his, her, or their deceased parent, & take the share or portion of said estate such parent would have taken had he or she survived. And if the said Frances shall die in the lifetime of her said husband, leaving a child or children, or descendants of such child or children, then the said Francis Dodge, his heirs, executors, & administrators, shall be seized & possessed of the said trust subject & estate for the use of such child or children or descendants, to be paid over, divided, & partitioned among them, at the time & in the manner following: When such child, if only one, or the youngest of such children, if more than one, shall have attained the age of twenty-

one years, the said Francis Dodge shall convey, transfer, pay over, & deliver to such child, if only one, or to such children,
82 if more than one, & their heirs, share and share alike, the whole of the said trust subject and estate not disposed of by any will or testament of the said Frances. And if it happen that such child, if only one, or any one or more of such children, if more than one, shall marry & die leaving issue before the time appointed for such distribution, such issue shall stand in the place of his, her, or their deceased parent, & take the share of said estate such parent would have taken if he or she had survived; and until such child, or the youngest of such children, shall have attained the age of twenty-one years, the said Francis Dodge shall take the rents & annual profits of the said estate to his own use; and if the said Frances shall sur[vive] her said husband, then the heirs, executors, and administrators of the said Francis Dodge shall, by sufficient deeds or other necessary instruments of writing, reconvey, transfer, and
83 assign all the said trusts subject & estate then in hand, & all the uncollected rents & income accrued thereon to the said Frances, her heirs, executors, & administrators, discharged of the trusts created by this deed, so far as any of the said trusts remain unexecuted.

And the said Francis Dodge for himself, his heirs, executors, & administrators, doth hereby covenant & agree with the said Frances I. Chapman that he, the said Francis Dodge, his heirs, executors, & administrators, shall & will at any time after the solemnization of the said contemplated marriage, & in consideration thereof, when requested by the said Francis so to do, make, execute, acknowledge, & deliver to any person or persons who may be named trustees for the purpose by the said Francis, & to their heirs, any deed or deeds, or other instrument of writing which counsel learned in the law may devise & advise to be necessary & proper more fully and effectually to convey, assure, & settle the estate, real and personal, of her,
84 the said Frances, to & for the uses, trusts, & purposes, & with like powers and authority as are hereinbefore declared of & concerning the said trusts subject & estate.

In testimony whereof, the said Frances I. Chapman & Francis Dodge have, each for himself and herself, hereunto set their hands & seals, the day & year first aforesaid.

FRANCES I. CHAPMAN. [SEAL.]
FRA'S DODGE. [SEAL.]

Signed, sealed, & delivered in our presence, the following words having been first interlined, viz: "by her" in the 14th line of the 5 page, & "the time" in the 1st line of the 7th page—

PAUL STEVENS.
A. K. ARNOLD.

85 WASHINGTON COUNTY, *District of Columbia:*

We, Paul Stevens & A. K. Arnold, two justices of the peace in & for Washington county, in the District of Columbia, do hereby certify that Frances I. Chapman, a party to a certain deed bearing date

the twenty-second day of January, in the year eighteen hundred fifty-two, & hereto annexed, personally appeared before us, in our said county, the said Frances I. Chapman, being personally well known to us to be the person who executed the said deed, & acknowledged the same to be her act & deed. Given under our hands & seals this twenty-second day of January, in the year eighteen hundred fifty-two.

PAUL STEVENS, *J. P.* [SEAL.]
A. K. ARNOLD, *J. P.* [SEAL.]

86 Endorsement: Rec'd 26th Feb'y, 1852, to be recorded, and the same day was recorded in Liber J. A. S. No. 36, folios 452, 453, 454, 455, 456, 457, one of the land records for Washington county, in the District of Columbia, and examined by Jno. A. Smith, cl'k.

87 Mr. Matthews submits rebutting testimony.

WILLIAM A. GODON, called by Mr. MATTHEWS, being duly sworn, deposes and says:

My name is William A. Gordon. I am solicitor for the defendants. The first I knew of the case was by receiving a note from Mr. Walter S. Cox desiring me to see him in regard to this case, his appointment to the bench preventing him from acting further as counsel. I got the papers from him, and after examination of the bill informed him that I considered the children had a good defence, and that we could have nothing to do with the case unless that defence was fully brought out, one of the children being an infant and the other two being females. Later I had an interview with Mr. H. H. Dodge, one of the defendants, at which Mr. Francis Dodge was present. I then stated that if we went into the case we would resist these claims in behalf of the children of Mrs. Dodge,
88 otherwise we would not touch it at all. Mr. Francis Dodge then made the remark that the claims were just ones, and he was informed that his action bound the estate, and so far as he was concerned thought there should be no contest, but that an effort ought to be made to secure time from the creditors, in view of the depreciation of property at that time.

My impression is that we sent word to the children that they had certain rights which we would defend, if they so desired. I know that Forrest Dodge, the infant, was spoken to by us, and he desired us to protect his interest, and my impression is that his sisters were informed through him.

When the answer was prepared my brother agreed to take it to them, and I impressed on him the necessity of explaining the import very fully to them, and especially to tell them that if they desired the property to be sold to pay these claims, that all that was necessary was to make no defence.

I have no personal knowledge of what he did in the inter-
89 view with them. I don't know that I had any conversation with him. I know that the answer was filed.

I think that it is proper here to state that since our connection with the case, Mr. Francis Dodge has never suggested or expressed any desire to have these claims resisted, as he frequently stated that he considered himself fully authorized under the marriage settlement to bind the estate of his wife.

I would state here, in answer to Mr. Matthews' question in regard to the preparation of the answer of Maggie Addison and Ella Dodge, that we knew that they desired us to avail ourselves of all legal defences in their behalf in this case, otherwise we would never gone to the trouble of preparing that answer.

I did not personally have any consultation with either of them previous to the preparation of their answer, not since, in regard to this matter.

I prepared the draft of the answer, my brother wrote it out;
90 we had conversations about it. In this matter we are fully authorized to defend this case by Ella S. Dodge, Maggie D. Addison, and Forrest Dodge. In regard to the other defendants, we prepared formal answers at their request. Of course I mean those we appeared for.

WILLIAM A. GORDON.

Sworn to and subscribed before me, this 12th day of November, 1879.

B. G. LOVEJOY, *Examiner.*

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, B. G. Lovejoy, examiner in chancery, do hereby certify that the foregoing depositions for plaintiff and defendants were taken down and by me reduced to writing from the statements of the witnesses, who were first duly sworn, and who subscribed their names thereto after the same were read over to them by me. I further certify that I am not of counsel, nor in any way interested in the cause.

B. G. LOVEJOY,
Examiner in Chancery.

91 Supreme Court of the District of Columbia, holding a Special Term.

DISTRICT OF COLUMBIA, }
Washington County, } *to wit:*

UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Know ye, that the last will and testament of Frances I. Dodge, late of Georgetown, D. C., deceased, hath in due form of law been exhibited, proved, and recorded, in the office of the register of wills for Washington county aforesaid, a copy of which is to these presents annexed; and that administration of all the goods, chattels, and credits of the said Frances I. Dodge, deceased, is hereby granted and committed unto Francis Dodge, executor by the said will appointed.

Witness, A. B. Olin, Esquire, justice of the supreme court of the

District of Columbia, this 28th day of March, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

[SEAL.] Test: A. WEBSTER,
Register of Wills.

92 I do solemnly swear that I will well and truly administer the goods, chattels, and personal estate of Frances I. Dodge, late of Washington county, in the District of Columbia, deceased, to the best of my knowledge, according to law, and give a just account of my administration when thereto I shall be lawfully called. So help me God.

FRA'S DODGE, *Executor.*

Sworn and subscribed before me, this 28th day of March, A. D. 1876.

Test: A. WEBSTER,
Register of Wills.

93 EXHIBIT W. A. G., No. 2.

The last will and testament of me, Frances I. Dodge, late Chapman, wife of Francis Dodge, of Georgetown, in the District of Columbia, made by virtue of the power of appointment reserved to me in manner hereinafter mentioned: Whereas, under the settlement executed previously to & in contemplation of my marriage, and bearing date the twenty-second day of January, in the year eighteen hundred [and] fifty-two, and recorded among the land records of Washington county, in the District of Columbia, in liber J. A. S., No. 36, at folio 452, &c., all and singular the estate, real & personal, in possession, reversion, or expectancy of me, the said Frances I. Dodge, on the eve of my then contemplated marriage with the said Francis Dodge, my present husband, & more particularly designated & described in the said deed of settlement, was vested in the said Francis Dodge, my elected trustee, and his heirs, executors, and administrators, according to the nature and quality thereof, on certain trusts for the benefit of myself for the term of my natural life, &
94 with power for me to appoint & dispose of the same by any will or testament to be signed, sealed, and published by me as my will and testament, in such manner, to such person or persons, & for such estate or estates as I may see fit.

Now, I, the said Frances I. Dodge, in execution of the said power of appointment, & of any & every other power enabling me in this behalf, do, by this my last will and testament, or writing in the nature of a will, signed, sealed, and published by me in the presence of, and attested by three credible witnesses whose names are hereunder subscribed as witnesses, give, devise, bequeath, & appoint all my estate, real and personal, whatsoever & wheresoever; & all & singular the trust property and estate which, by virtue of my said marriage settlement I have power to dispose of, devise, bequath, or appoint unto my husband, Francis Dodge, his heirs, executors, & administrators in trust never-less for the sole use and benefit of all my children living at the

time of my death & their heirs, equally to be divided among them,
95 & to be distributed among, paid over, or delivered to them severally, as they attain the age of twenty-one years; and if it shall happen that any one or more of my children shall have married & died in my lifetime, leaving issue, I do direct and appoint that such issue shall stand in the place of his, her, or their parent, and take the share, equally among them, such parent would have taken had he or she survived; and I do hereby further order, direct, and appoint, authorize, and empower my said husband, Francis Dodge, whenever, in his judgment, it will be for the benefit and advantage of my children, for whose use I have hereby bequeathed, devised, & entrusted to him my estate, to sell and dispose of the same, or of any part thereof, to make sale thereof, or of any part thereof, to such person or persons, for such price or prices, & on such terms of payment as he may judge best & most for the advantage of my said children, and to receive the proceeds of such sale or sales of the purchaser, who shall not be required to see to the ap-
96 plication thereof, & to convey the property sold to the purchaser in fee by a deed or deeds, to be executed by him, under his hand and seal. And such proceeds of sale, when & as the same shall be received, the said Francis Dodge shall invest in bonds or stock of the United States, or of one or more of the States of this Union, or in mortgages upon, or in the purchase of, real estate, in his discretion. And I do hereby authorize my said husband and trustee to receive the rent, interest, & annual income of my said estate during the minority of my said children, and until they severally attain the age of 21 years, at which time their respective portions are to be paid to them, and apply the same to the education and support of such children until they attain such age and receive their said portion of my estate. I do hereby appoint my husband, Francis Dodge, executor of this my last will and testament.

In testimony whereof, I have hereunto set my hand and seal, this 21st day of October, in the year 1858.

FRANCES I. DODGE. [SEAL.]

97 Signed, sealed, published, & declared by the testatrix, Frances I. Dodge, as for & to be her last will and testament in our presence, who have, at her request, in her presence & in the presence of each other, hereunto subscribed our names as witnesses, the words "fifty," in 8th line, 1st page; "to him," 24th line, 2d page, and "portions," 12th line, 3d page, being interlined.

ELLEN M. BOGGS.
ANNA E. MATTHEWS.
ANNA S. TAYLOR.

Supreme Court of the District of Columbia, holding a Special Term February 29th, 1876.

DISTRICT OF COLUMBIA, *Washington County,* } *to wit:*

This day appeared Ellen M. Boggs, Anna E. Matthews, and Anna

S. Taylor (now Griffith), the subscribing witnesses to the foregoing last will and testament of Frances I. Dodge, late of Washington county aforesaid, deceased, and severally made oath on the Holy Evangels of Almighty God that they did see the testatrix therein named sign and seal this will; that she published, pronounced,
98 and declared the same to be her last will and testament; that at the time of so doing she was, to the best of their apprehension, of sound and disposing mind, memory, and understanding and capable of executing a valid deed or contract, and that their names as witnesses to the aforesaid will were signed in the presence and at the request of testatrix, and in the presence of each other.

Test: A. WEBSTER,
Register of Wills.

Codicil.

I, Frances I. Dodge, of Geo. Town, District of Columbia, do make this codicil to my last will and testament: Inasmuch as my daughter, Maggie D. Dodge, has against my will and wishes married Watkins Addison, Junior, I hereby revoke and annul so much of my last will and testament, of date October 21st, 1858, as provides that said Margaret D. Dodge shall participate in or receive any portion or share of my estate, real or personal, therein and thereby devised and
99 bequeathed to her. And as it is my will and desire that her said portion and share of my estate shall pass to her sister and brother, I now hereby devise and bequeath the said portion, share, and estate so devised to my said daughter Margaret to my daughter, Ella S. Dodge, and my son, Forrest Dodge, and their heirs, to be equally divided between them, share and share alike.

In testimony whereof, I have hereunto set my hand and seal, this seventeenth day of September, eighteen hundred and seventy-three.

FRANCES I. DODGE. [SEAL.]

Signed, sealed, published, and declared by the above-named testatrix, Francis I. Dodge, as and for her codicil to her last will and testament, in our presence, who, at her request, in her presence, and in the presence of each other, have subscribed our names as witnesses.

I. HOLDSWORTH GORDON.
CHA'S H. CRAGIN, JR.
PHILIP T. BERRY, JR.

100 Supreme Court of the District of Columbia, holding a Special Term February 29th, 1876.

DISTRICT OF COLUMBIA, } *to wit:*
County of Washington, }

This day appeared I. Holdsworth Gordon, Cha's H. Cragin, Jr., and Philip T. Berry, Jr., the subscribing witnesses to the aforegoing codicil to the last will and testament of Frances I. Dodge, late of Washington county aforesaid, deceased, and severally made oath on the Holy Evangels of Almighty God that they did see the testatrix therein named sign and seal this codicil; that she published, pro-

nounced, and declared the same to be a codicil to her last will and testament; that at the time of so doing she was, to their best of their apprehension, of sound and disposing mind, memory, and understanding, and capable of executing a valid deed or contract, and that their names, as witnesses to the aforesaid codicil, were signed in the presence and at the request of the testatrix, and in the presence of each other.

Test: [SEAL.] A. WEBSTER,
Register of Wills.

101 DISTRICT OF COLUMBIA, } *to wit:*
Washington County, }

OFFICE OF REGISTER OF WILLS.

I hereby certify that the foregoing is a true copy of the original will and codicil of Frances I. Dodge, deceased, and the probate thereto, filed and recorded in the office of register of wills for Washington county aforesaid, and also that the said will and codicil, after having been proven by the witnesses whose names appear in the foregoing probates, was by order of the supreme court of the District of Columbia duly admitted to probate and record on the 29th day of February, A. D. 1876.

Witness my hand and the seal of the supreme court of the District of Columbia, this 3rd day of April, 1876.

[SEAL.] A. WEBSTER,
Register of Wills.

102 $1,084$\frac{81}{100}$. GEORGETOWN, D. C., *May 7th*, 1875.

Four months after date I promise to pay to the order of Thomas Knowles one thousand & eighty-four $\frac{81}{100}$ dollars, at Georgetown Savings Bank, valued received, with int. at 10 per c't per. a.

No. ——. Due ——. F. DODGE,
Trustee of Fannie I. Dodge.

Endorsed: 4307. F. Dodge, trustee of Fannie I. Dodge. Due Sept. 7–10, '75. $1,084.81. Int., 37.06. Thos. Knowles. Pl'ff A.

103 1,028$\frac{40}{100}$. GEORGETOWN, D. C., *June 4th*, 1875.

Ninety days after date I promise to pay to the order of Thomas Knowles one thousand & twenty-eight $\frac{40}{100}$ dollars, payable at Farmers' & Mech's' National Bank, value received, with interest at 8 per cent. per annum until paid.

No. —. Due 2–5 Sept. F. DODGE,
Trustee for Fannie I. Dodge.

Endorsed: 7649. F. I. Dodge. 1,028.40. 21.24. 2–5 Sept., '75. Thos. Knowles. Pl'ff B.

104 , (Copy.)

$1,084$\frac{81}{100}$. GEORGETOWN, D. C., *Sept. 10th*, 1875.

Four months after date I promise to pay to the order of Thomas

Knowles one thousand & eighty-four $\frac{81}{100}$ dollars, at Georgetown Savings Bank, with int. at 10 per c't. until paid.

Value received.

No. —. Due ——.

F. DODGE,
Trustee for Fannie I. Dodge.

Endorsed: F. Dodge, trustee. $1,121.84. Jan'y 10–13, 1875. Thos. Knowles.

105 Supreme Court of the District of Columbia, holding a Special Term, April 11th, 1876.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

This day appears Thomas Knowles, and made oath on the Holy Evangely of Almighty God that no part of the money intended to be secured by the annexed note hath been received, or any security or satisfaction given for the same.

Test: [SEAL.]

A. WEBSTER,
Register of Wills.

[Endorsed across the face:] Will pass when paid. By the court: A. B. Olin. Test: A. Webster, register of wills.

106 (Copy.)

$821\frac{24}{100}$. WASHINGTON, D. C., *June 4th*, 1875.

On demand, after date I promise to pay to the order of Thomas Knowles twenty-one $\frac{24}{100}$ dollars, payable at ——, value received, with interest at — per annum until paid.

No. —. Due —.

F. DODGE,
Trustee for Fannie I. Dodge.

Endorsed: Thos. Knowles.

107 Supreme Court of the District of Columbia, holding a Special Term, April 11th, 1876.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

This day appeared Thomas Knowles, and made oath on the Holy Evangely of Almighty God that no part of the money intended to be secured by the annexed note hath been received, or any security or satisfaction given for the same.

Test: [SEAL.]

A. WEBSTER,
Register of Wills.

[Endorsed across the face:] Will pass when paid. By the court: MacArthur, judge. Test: A. Webster, reg. of wills D. C.

108 (Copy.)

$837\frac{6}{100}$. GEORGETOWN, D. C., *Sept. 10th*, 1875.

On demand, after date I promise to pay to the order of Thomas

Knowles thirty-seven $\frac{6}{100}$ dollars, payable at ——, value received, with interest at 8 per cent. per annum until paid.

No. —. Due —.

F. DODGE,
Trustee for Fannie I. Dodge.

Endorsed: Thos. Knowles.

109 Supreme Court of the District of Columbia, holding a Special Term, April 11th, 1876.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

This day appeared Thomas Knowles, and made oath on the Holy Evangely of Almighty God that no part of the money intended to be secured by the annexed note hath been received, or any security or satisfaction given for the same.

Test: [SEAL.]

A. WEBSTER,
Register of Wills.

[Endorsed across the face:] Will pass when paid. MacArthur, judge. Test: A. Webster, register of wills D. C.

110 (Copy.)

$1,028\frac{40}{100}$. GEORGETOWN, D. C., *Sept. 4th*, 1875.

Ninety days after date I promise to pay to the order of Thomas Knowles one thousand and twenty-eight $\frac{40}{100}$ dollars, payable at F. & M. National Bank, value received, with interest at 8 per cent. per annum until paid.

No. —. Due —.

F. DODGE,
Trustee for Fannie I. Dodge.

Endorsed: F. Dodge, Thos. Knowles. $1,028.40. 21.24. 3–6 Dec., '75.

111 Supreme Court of the District of Columbia, holding a Special Term, April 11th, 1876.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

This day appeared Thomas Knowles, and made oath on the Holy Evangely of Almighty God that no part of the money intended to be secured by the annexed note hath been received, or any security or satisfaction for the same.

Test: [SEAL.]

A. WEBSTER,
Register of Wills.

[Endorsed across the face:] Will pass when paid. By the court. MacArthur, justice. Test: A. Webster, reg. of wills D. C.

112 DISTRICT OF COLUMBIA, *Washington County,* } *sct:*

By this public instrument of protest, be it known, that on the sixth day of December, in the year eighteen hundred and seventy-five, at the request of Farmers & Mechanics' National Bank of George-

town, D. C., holders of the original note hereto attached, I, M. Plater, notary public, residing in said county, duly commissioned and sworn, presented said note at Farmers & Mechanics' Nat'l Bank and demanded payment thereof, and was answered by the book-keeper, not good.

Therefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, against the drawer and endorser of the aforesaid note, and all others whom it may or doth concern, for all costs, exchange, re-exchange, charges, damages, and interest, suffered and to be suffered for want of payment thereof. And on the same day I delivered notice of protest to each endorser, viz: Notice for Thos. Knowles, directed to him at his store.

In testimony whereof, I have hereunto set my notarial seal
113 of office, the day and year aforesaid.

[SEAL.] MAYHEW PLATER,
Notary Public.

Protesting------ $1 75
Notice'--------- 10

Recorded Book A.

114 Copy.

Doll's 3,000. GEORGETOWN, D. C., *Sept.* 1*st*, 1866.

On demand, I promise to pay to the order of William Chapman three thousand dollars, for value received, with interest from date, payable semi-annually, being for the purpose of his one-fourth interest in the homestead house and lot situated on the corner of Congress and Dunbarton streets, Georgetown, D. C.

(Signed) FRANCIS I. DODGE.

Endorsed: Rec'd interest on within note to March 1, 1867, $91; rec'd interest on within note to Sept. 1, 1867, $90; rec'd interest on within note to March 1, 1867, $90.

115 PL'FF EXHIBIT D.

GEORGETOWN, *Jan'y* 10*th*, '75.

THOS. KNOWLES.

DEAR SIR: I am sorry to say my wife is still dangerously ill, and has been ever since I saw you. She is now in a stupor from 8 o'ck yerserday morning. Of course I can do nothing yet as to the security promised you. As long as Mrs. Dodge lives, it requires her signature; if she dies, I am still trustee for her heirs, and can then execute a deed to you as such trustee. I hope you will not again mortify me by causing the note at savings b'k to be protested. You can waive protest. —— due 10-13th.

Yours truly, F. DODGE.

116 *First and Final Account of Francis Dodge, Executor of Francis I. Dodge, Deceased, Due Notice Having Been Given.*

1876.	This accountant charges himself with the amount of the inventory, which consists of household furniture, and appraised @	$922 80	
1876.	And he claims credit for the following, viz:		
	By paid register of wills, vou. 1		$13 63
Feb'y 1.	" Evening Star, vou. 2		4 00
M'ch 29.	" " vou. 3		3 50
May 6.	" appraisers, vou. 4		6 00
May 6.	" register of wills, vou. 5		3 00
June 1.	" W. C. Hazel, vou. 6		3 00
	" Joseph Gawler, undertaker vou. 7		188 47
1877.			
Apl. 3.	" Washington Law Reporter vou. 8		4 00
	By commission on $922 $\frac{80}{100}$ @ 6½ per cent.		59 98
May 25.	"paid register of wills, vou. 9		34 48
			$320 06
	Balance		602 74
		$922 80	$922 80

117 Balance down $602 74

Distributed *pro rata* among the legal creditors of deceased @ .0443+ per cent.

To B. W. Reed and Sons, note and int., No. 1	$162 84		7 29
" G. W. Cropley, note & int., No. 2	258 81		11 56
" Wm. Chapman, " " 3	4,668 00		206 99
" Emily Dodge, " " 4	526 56		23 42
" Charles D. Pearson, " " 5	556 54		24 75
" Wm. M. Shuster & Bro., note & int., No. 6	145 60		6 48
" Mayfield & Huston, note & int., No. 7	1,681 28		74 59
" George Kengla & Bro., note & int., No. 8	840 24		37 32
" Thomas Knowles, note & int., No. 9	42 24		1 89
" " " " " " 10	1,274 65		56 58
" " " " " " 11	23 82		1 08
" " " " " " 12	1,174 16		52 12
" Benjamin Miller, " " " 13	226 56		10 08
Amounts forward	$11,581 30	$602 74	$514 15

118	Amount forward	$11,581 30	$602 74	$514 15
	To Perry & Brother, acc't & int., No. 14	46 15	------	2 07
	To W. W. Galt, Bro. & Co., acc't No. 15	81 25	------	3 61
	" Jno. H. Smoot & Son, acc't No. 16	240 62	------	10 68
	" Charles G. Ball, acc't No. 17	77 50	------	3 46
	" Geo. W. Cropley, acc't No. 18	119 05	------	5 30
	" Thomas Knowles, acc't No. 19	120 10	------	5 33
	" George Kengla & Bro., acc't No. 20	441 33	------	19 60
	" Axmistead Peter, M. D., acc't No. 21	202 00	------	8 95
	" estate of H. Magruder, dec'd, acc't No. 22	353 00	------	15 68
	" W. Nordlinger, acc't No. 23	88 20	------	3 91
	" Mayfield & Huston, acc't No. 24	119 00	------	5 27
	" Christ Church, Georgetown, D. C., acc't No. 25	36 00	------	1 59
	" Caroline J. Becraft, acc't & int., 26	70 99	------	3 14
		$13,576 49	$602 74	$602 74

119 DISTRICT OF COLUMBIA, *to wit:*

OFFICE OF REGISTER OF WILLS,
June 9th, 1879.

This day appeared Francis Dodge, executor as aforesaid, and made oath on the Holy Evangels of Almighty God that the foregoing account, as stated, is just and true; that he has *bona fide* paid or secured to be paid the several sums for which he claims credit and allowance.

Test:

A. WEBSTER,
Register of Wills, D. C.

In the Supreme Court of the District of Columbia, holding a Special Term for Orphans Court Business, the 12th day of June, A. D. 1877.

The foregoing account was presented to the court, and, after examination, the same was approved and passed.

Test:

A. WEBSTER,
Register of Wills, D. C.

120 Supreme Court of the District of Columbia.

DISTRICT OF COLUMBIA, *Washington County,* } *to wit:*

OFFICE OF THE REGISTER OF WILLS.

I hereby certify that the aforegoing is a true copy from the original first and final account of Francis Dodge, executor of Frances I. Dodge, deceased, filed and recorded in the office of the register of wills for the District of Columbia.

Witness my hand and the seal of the supreme court of the District of Columbia, holding a special term for orphans court business, this 21st day of October, A. D. 1879.

[SEAL.]

A. WEBSTER,
Register of Wills, D. C.

121 List of notes given Thomas Knowles by F. Dodge, trustee, for Fannie I. Dodge, in settlement of account against Mrs. Fannie I. Dodge, and renewal of notes.

Note dated Sept.	28, 1870, at 60 days for am't	$264	63
" Nov.	30, 1870, at 60 "	403	03
" Feb'y	1, 1871, at 60 "	489	53
" April	5, 1871, at 60 "	595	09
" June	7, " at 60 "	602	37
" Aug.	9, " at 60 "	609	74
" Oct.	11, " at 60 "	517	21
" Dec.	13, " at 60 "	523	54
" Feb'y	14, 1872, at 90 "	529	94
" May	17, " at 90 "	240	89
" Aug.	17, " at 90 "	245	86
" Nov.	18, " at 90, (ledger ac. added to renewal)	1,039	96
" Feb'y	19, 1873, at 90 days	1,061	45
" May	23, 1873, at 90 "	1,000	00
" Aug.	23, 1873, at 90 "	1,000	00
" Nov.	24, 1873, at 90 "	1,000	60
" Dec.	3, 1874, note at 6 months for ledger ac.	585	12
" Feb.	25, 1874, at 90 days	1,020	67
" May	29, 1874, at 90 days	1,041	76
" July	1, 1874, note at 6 months (renewal & ledger ac.)	776	43
" Aug.	29, 1874, at 90 days	1,063	29
" Nov.	30, 1874, at 90 days	1,056	56
" Jan'y	4, 1875, at four months	957	46
" M'ch	3, 1875, at 90 days	1,028	40
" May	7, 1875, at four months	1,084	81
" June	4, 1875, at 90 days	1,028	40

122 *Decree Dismissing Bill of Complaint. Filed Apr.* 13, 1880.

In the Supreme Court of the District of Columbia.

THOMAS KNOWLES
v.
FRANCIS DODGE *et al.* } Equity. No. 6561.

This cause coming on to be heard on bill answers and testimony taken in the case, and having been argued by counsel, it is, this thirteenth day of April, A. D. 1880, ordered, adjudged, and decreed by the court that the bill of complaint be, and the same is hereby dismissed with costs.

A. B. HAGNER,
Asso. Justice.

123 *Appeal to Gen. Term.*

THOMAS KNOWLES
vs.
FRANCIS DODGE. } 6561. Equity Doc. 19.

The clerk will please enter plaintiff's appeal from decree of court in special term dismissing bill.

C. M. MATTHEWS, *For Pl'ff.*

Appeal as ordered entered April 16, 1880.

BY THE CLERK.

124 *Decree Reversing Decree in Special Term. Filed Feb.* 23, 1881.

In the Supreme Court of the District of Columbia.

THOMAS KNOWLES, Plaintiff,
vs.
FRANCIS DODGE *et al.*, Defendant. } In Equity.

This cause coming on to be heard in the court in general term on the appeal taken by plaintiff from the decree made by the court in special term on the 13th April, 1880, and the same having been argued by counsel and duly considered, it is, by the said court in general term, this 23rd day of February, 1881, ordered, adjudged, and decreed that said decree thus passed in special term be, the same is hereby, reversed, and that the claim of said plaintiff as stated, & in the bill in this cause filed, is hereby decreed and adjudged to be a lien, and chargeable upon all and singular the real & personal estate conveyed by Frances I. Chapman, in trust, to
Francis Dodge, by and dated on the 22nd January, 1852, &
125 recorded among the Land Records of said District in liber
J. A. S., No. 36, at pages 452, &c., of said records, upon said original trust subject, as also upon all substitutions & and reinvestments thereof; and further, that this cause —— to the court in special term, sitting in equity, for further proceedings conformable to this decree.

From this decree the defendants pray an appeal to the Supreme Court of the United States, which appeal is hereby allowed.

By order of the court:

D. K. CARTTER, *Ch'f Just.*

126 In the Supreme Court of the District of Columbia, the 5th day of November, 1881.

THOMAS KNOWLES
vs.
ELLA S. DODGE *et al.* } No. 6561. Equity Docket 19.

Know all men by these presents, that we, Ella S. Dodge, Forrest Dodge, Maggie D. Addison, Henry H. Dodge, and James G. Berret are bound unto the above-named Thomas Knowles in the sum of

five hundred dollars ($500), to be paid to the said Thomas Knowles, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this fifth day of November, 1881.

Whereas the above-named Ella S. Dodge, Forrest Dodge, and Maggie D. Addison have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Ella S. Dodge, Forrest Dodge, and Maggie D. Addison shall prosecute their said appeal to effect, and answer all damages and costs if he shall fail to make good this plea, then this obligation shall be void; otherwise, the same shall be and remain in full orce and virtue.

(Signed)

ELLA S. DODGE. [SEAL.]
FORREST DODGE. [SEAL.]
MAGGIE D. ADDISON. [SEAL.]
HENRY H. DODGE. [SEAL.]
JAMES G. BERRET. [SEAL.]

Sealed and delivered in presence of—
J. S. CONRAD, M. D.
EBEN DODGE.

Approved:
W. S. COX, *Justice, &c.*

127 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE, SUPREME COURT OF THE DISTRICT OF COLUMBIA:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this 5th day of November, 1881.

[SEAL.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR., *Assistant Clerk.*

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal, this 5th day of Nov., 1881.

D. K. CARTTER, *Chief Justice.* [SEAL.]

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 5th day of Nov'r, 1881.

[SEAL.] J. R. MEIGS, *Clerk*,
By J. R. MEIGS, JR., *Assistant Clerk*.

Endorsed on cover: Dist. of Columbia sup. court. No. 156. Francis Dodge, William Chapman, H. H. Dodge *et al.*, appellants, *vs.* Thomas Knowles. Filed 11th November, 1881.

114-430

Office Supreme Court U. S.
FILED.
JAN 8 1885
JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1884.
No. 156.

FRANCIS DODGE, et al., *Appellants*,

vs.

THOMAS KNOWLES, *Appellee.*

J. HOLDSWORTH GORDON,
Counsel for Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 156.

FRANCIS DODGE, et al., *Appellants*,

vs.

THOMAS KNOWLES, *Appellee*.

STATEMENT OF THE CASE.

The case comes to this court on appeal from a decree passed by the Supreme Court of the District of Columbia. The facts of the case are as follows:

Frances I. Chapman being the owner of certain real and personal property in the District of Columbia, and having in contemplation a marriage with one Francis Dodge, did, on the 22d day of January, 1852, execute an ante-nuptial settlement, whereby she conveyed all her estate to said Francis Dodge upon certain trusts. The deed provided that the property conveyed should be held by the trustee (printed record page 25, line 14)' * * "From and after the said contemplated marriage has been solemnized, for the sole and separate use and benefit of the said Frances I. Chapman during the term of her natural life, and so as that the same, or any part thereof, or the rents, income and profits thereof, or of any part there-

of, shall not be liable for the debts of him, the said Francis Dodge, or in any way subject to his control or contracts, except so far as is consistent with the provisions of this deed. To permit her, the said Frances, by herself or her attorney, appointed by writing under her hand, to collect and receive all the rents, interests, dividends and annual profits, which may from time to time accrue and become payable on the said trust subject and estate, and to dispose of the same as she may see fit, for her own separate use and benefit; and if the said Frances shall by any writing under her hand and seal, to be executed in the presence of, or to be attested by two witnesses, order and direct the leasing or absolute sale of the said real estate, or of any part thereof," * * * "then (printed record page 25, line 13) the said Francis Dodge and his heirs shall, from time to time, as so required, lease or sell the said real estate, or such part thereof, as the said Frances shall in such writing direct to be leased or sold, to such person or persons, for such price or prices, for such estate or estates and on such terms of payment as the said Frances may by such writing order, direct, and appoint, and shall collect and get in the proceeds of any such sale or sales, and shall invest the same in his name as trustee of the said Frances, in such manner as the said Frances may approve and require, and hold the said investments, when made, for the same uses, trusts and purposes, and with the like power and authority, and subject to the like limitations as are hereinbefore declared of and concerning the original trust subject;" * * * "and (printed record, p. 26, line 14,) it shall and may be lawful for the said Frances, notwithstanding her coverture, by any will or testament to give, devise and dispose of her said estate, real and personal, in such manner,

to such person or persons and for such estate or estates as she may see fit, and the said Francis Dodge and his heirs, executors and administrators, shall hold and dispose of the said estate, or such parts thereof, as the said Frances may by any such will or testament, give, devise and dispose of to any person or persons, for the use of such person or persons, according to the direction and appointment in such will or testament contained."

The contemplated marriage was solemnized soon after the execution and delivery of the above in part recited deed.

Frances I. Dodge (wife) departed this life on January 25th, 1876, leaving a last will and testament and a codicil thereto, (printed record, pp. 30 and 31,) bequeathing and devising her estate to Francis Dodge in trust for certain of her children, the said will and codicil being made, as alleged by testatrix by " virtue of the power of appointment reserved " to her in deed January 22nd, 1852, (printed record, p. 30.)

No provision was made in the will or codicil for payment of debts. Administration was duly had upon the personal property of the decedent and among other alleged creditors was the appellee, Thomas Knowles.

The personal estate of decedent was ratably distributed among the several claimants and being exhausted, the appellee, Knowles, filed a bill in equity, (printed record, page 1, setting forth the above ante-nuptial deed, asking for the sale of the real estate of the decedent, and application of the proceeds arising from such sale to the liquidation of the balance due upon his alleged claim, and upon the claims of such other creditors as might contribute to the cost of the proceeding.

The bill alleges that during the year 1876, and for several years theretofore, the said Frances I. Dodge, being indebted unto the said Knowles (printed record, page 2,) in a large sum of money for groceries, and other articles of food, by him furnished to her, on the credit of her sole and separate estate, for the maintainence of herself and her children, and her said husband, the said Francis Dodge being insolvent, and entirely without property or estate, caused said Francis Dodge for her, he signing the same as "trustee for Fannie I. Dodge," to make and deliver to the said plaintiff, or to his order, four (4) promisory notes" * * "all which (printed record, page 3,) said indebtedness said Frances I. Dodge declared was to her sole separate estate, upon the faith of which it was incurred, it having been representated to the said plaintiff, that her intention to fully secure the same by a proper conveyance in trust, had been from time to time, before her death, prevented by her physical condition."

The plaintiff prayed that the real estate of the decedent be decreed to be sold for the payment of his debt and such others as might to be found to be chargeable thereon. (printed record, page 4.)

The defendants, Ella S. Dodge, Maggie D. Addison, and Forrest Dodge, in answer deny that said notes are a lien upon any of the real estate mentioned in the bill. They deny that the alleged indebtedness was incurred in reference to the separate estate of said Frances I. Dodge, or that she had promised to secure the payment of the same. They deny that at the time said notes are alleged to have been made, said Francis Dodge was insolvent or unable to pay his just debts—they deny that the said Francis Dodge, as trustee for Frances I. Dodge,

acting under the provisions of the trust deed of 22nd of January 1852, was authorized to sign and deliver said notes. The answers of the other defendants are formal.

Issue was joined, testimony taken, and the cause being heard by the special term, the bill was dismissed. On appeal the court in general term reversed the decree passed in special term and decreed, "That the claim of said plaintiff as stated in the bill in this cause filed, is hereby decreed and adjudged to be a lien and chargeable upon all and singular the real and personal estate conveyed by Frances I. Chapman by deed dated on the 22nd of January, 1852, and recorded among the land records for the said District in Liber. J. A. S., No. 36 at pages 452 &c. of said records, upon said original trust subject as also upon all substitutions and reinvestments thereof."

From this decree appeal was made to this Honorable Court by the children and heirs of Frances I. Dodge.

POINTS.

It is contended that the appellee has no lien upon the real estate named, for his alleged claim.

I.

The deed of settlement declaring a particular mode in which Frances I. Dodge might have dispored of the real estate made the subject of the trust, her power was limited to that mode, to the exclusion of any aud all others.

The question as to whether a *feme covert cestui que trust* could dispose of her beneficial interest in the trust property in all cases where she was not in terms restrained

from so doing by the instrument creating the trust, has been the subject of much discussion. But it is respectfully submitted that whatever may be the English rule on the subject, the doctrine favored by the American courts has been that she can only dispoae of the estate in the mode pointed out in the declaration of trust.

The court below seems to have been largely if not principally influenced in its decision, in this case. by tne opinion of the Court of Errors in New York (I820,) in the case of Jacques *v.* The Methodist Episcopal Church, (17 Johnson Report, 548,) reversing a decree of the Chancery court rendered by Chancellor Kent and reported 3 Johnson Chancery Reports, 77; Chancellor Kent in the cause referred to, after carefully reviewing all the English decisions at great length, says (page 113.) "Instead of holding that the wife is a *feme sole* to all interests and purposes, as to her separate property, she ought only to be deemed a *feme sole sub modo*, or to the extent of the power clearly given by the settlement." Instead of maintaining that she has an absolute power of disposition, unless specially and restrained by the instrument, the converse of the proposition would be more correct, that she has no power but what is specially given, and to be exercised only in the mode prescribed, if any such there be. Her incapacity is general and the exception is to be taken strictly and to be shown in every case because it is against the general policy and immemorial doctrine of law."

It is true as above stated that the opinion of the learned Chancellor was overruled by the Court of Errors, but we quote his language that this Court may see how closely his doctrine has been followed by the subsequent decision of the highest courts of our land, both

the opinion of Chancellor Kent, and the overruling opinion of the Court of Errors being before them for investigation, consideration and advisement.

This doctrine of Chancellor Kent and the position taken by the appellants has been sustained by the courts of Maryland, whose decisions have ever been regarded as exercising a peculiarly controlling influence over the jurisprudence of this District.

In Cooke *v.* Husband's, 11 Maryland 492, the Court says:

"In Maryland the law is settled, that when a mode of alienation or of appointment is provided, it operates as a negation of any other mode, and is a paramount law governing and controlling every contract in relation to it."

Again in Williams *v.* Donaldson, 4 Maryland, ch. 444, "The American doctrine as established by these cases and others, is, that the power of a *feme covert* over her separate estate must be exercised according to the mode prescribed by the instrument under which she becomes entitled to the property, and that to confine her to that particular mode the instrument need not specially restrict her to it. That she has no power over her separate estate but such as has been specificially given to her, and in exercising the power of disposition she is restricted to the particular mode specified in the instrument under which she takes, when the instrument undertakes to make such specification."

Also Farr *v.* Williams, 4 Md. ch. 68.

In Pennsylvania the same position has been maintained.

In Thomas *v.* Folwell 2 Wharton 11 (16) says the Court of the powers of a *feme covert*: "We hold it to be the settled law of Pennsylvania that instead of having every power from which she is not negatively debarred in the conveyance, she shall be deemed to have none but what is positively given or reserved to her."

Also, Rogers *v.* Smith, 4 Pa. st. 93 (98.)
Lynes Ex. *v.* Crouse, 1 Pa. st. 111.
Lancaster *v.* Dolan, 1 Rawle 231 (247.)

This doctrine is also recognized in Illinois.

In Swift *v.* Castle, 23 Ills. 132. The Court after a general review of the American and English cases, declares (page 47), "From these various cases it is manifest to our minds, that the weight of authority clearly is, that a married woman can only convey her trust property in the manner authorized, and for the purpose specified in the instrument creating the trust, if it contains any such provisions." * * * "When the instrument creating the trust confers upon her the power to sell or dispose of the trust estate, she, for the purpose of executing the trust, is an attorney in fact, and all her acts to be legal, must, as those of any other attorney in fact, strictly conform to the powers delegated, and any deviation from its provisions will render the act void for want of authority. No reason is perceived why a court of equity should confer upon her additional powers to those contained in the instrument creating the trust, more than it should upon any other attorney in fact." * * "When the instrument creating the trust provides that it may be disposed of by one mode it excludes all others."

Also, Conkling *v.* Doul, 67 Ills. 355.

The same has been held in Virginia. Said Tucker, President of the Court of Appeals, in Williamson *v.* Beckham, 8 Leigh. 20 (27,) "Upon the best reflection which I can give to this matter, I am of opinion that a *feme covert*, holding separate property in real estate by deed or will prescribing a peculiar mode of disposition, cannot dispose of it in any other mode, although the deed or will does not negative such other mode expressly."

Our position has also been sustained by the courts of Georgia, Texas, North Carolina, Rhode Island, South Carolina, Tennessee and Mississippi, in the following cases:

Weeks *v.* Lego, 9 Ga. 199–203.
Wylett *v.* Collins, 9 Ga. 237.
Cartwright *v.* Hollis, 5 Texas, 169.
Hurdy *v.* Hollis, 84 N. C.
Harris *v.* Harris, 7 N. C.
Metcalf *v.* Cooke, 2 R. I. 355 (362.)
Ewing *v.* Smith, 3 Dess. 417 (454.)
Reid *v.* Lamar, 1 Strob, Eq. 27 (36.)
Morgan *v.* Elam, 12 Tenn. 375.
Ware *v.* Sharp, 31 Tenn: 489 (495.)
Daly *v.* Mitchell, 9 S. & M. 435 (Miss.)
Montgomery *v.* Bark, 10 S. & M. 567 (Miss.)

II.

Even had Mrs. Frances I. Dodge the power to charge her separate estate with the payment of her debts in any other manner than that prescribed by the instrument creating the trust; her general liabilities cannot be satisfied out of such estate unless she has *expressly charged* the same with their payment, and in many cases it has been

In Thomas *v.* Folwell 2 Wharton 11 (16) says the Court of the powers of a *feme covert*: "We hold it to be the settled law of Pennsylvania that instead of having every power from which she is not negatively debarred in the conveyance, she shall be deemed to have none but what is positively given or reserved to her."

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Ewing *v.* Smith, 3 Dess. 417 (454.)
Reid *v.* Lamar, 1 Strob, Eq. 27 (36.)
Morgan *v.* Elam, 12 Tenn. 375.
Ware *v.* Sharp, 31 Tenn: 489 (495.)
Daly *v.* Mitchell, 9 S. & M. 435 (Miss.)
Montgomery *v.* Bark, 10 S. & M. 567 (Miss.)

II.

Even had Mrs. Frances I. Dodge the power to charge her separate estate with the payment of her debts in any other manner than that prescribed by the instrument creating the trust; her general liabilities cannot be satisfied out of such estate unless she has *expressly charged* the same with their payment, and in many cases it has been

held that the intent to charge must be declared in the very contract which is the foundation of the charge.

Dale *v.* Robinson, 51 Vermont, 20 (29.)
William *v.* Huguin, 69 Ill., 214.
Yale *v.* Dederer, 22 N. Y., 450.
Eisenlord *v.* Snyder, 61 N. Y., 45, (46.)
Wilson *v.* Jones, 46 Mo., 349, (555.)
Corn Exchange Ins. Co. *v.* Babcock, 42 N. Y., 613.

III.

Equity will not decree satisfaction out of the *corpus* of the real estate, but only out of the personalty and out of the rents and profits of realty.

Perry on Trusts, Sec. 662.
Cox *v.* Wood, 20 Ind., 54.
Frank *v.* Lilienfield, 33 Gratt., 377.
Hulme *v.* Tennant, 1 Bro. C. C., 20.
Palmer *v.* Rankins, 30 Ark., 771.
Radford *v.* Carwile, 13 W. Va., 572, (682.)
Lewis *v.* Yale, 4 Fla., 418, (425.)
Weinberg *v.* Rempe, 15 W. Va., 829.

IV.

A married woman with a separate estate for life and a general power of appointment does not, by exercising the power, make the fund or property assets for payment of her creditors. The same rule cannot apply that applies in the case of a male who labors under no disability as to making contracts.

A married woman cannot make any contract, in fact, beyond her separate estate. The existence of a *separate estate must precede the contract.* How then can she bind estate which can only be converted into her estate, if it

can be so at all, by her will taking effect after her death?

The general doctrine of powers on this subject does not apply, and it has been so held by the highest courts of England.

The case of Blatchford *v.* Woolley, (1863) 2 Drewry and Smale, 204, in all respects bears a strong resemblance to the case now before the court.

In contemplation of the marriage of Margaret Blatchford, certain personal property was vested in trustees for her life to her separate use, reserving to her a general power of appointment by will and in default there was a limitation over. Mrs. Blatchford exercised her power of appointment by will, and the bill was filed to have her estate administered, and under the decree creditors came in to prove and the contention on their part was that the appointed fund was liable to their claims.

The Vice-Counsellor dismissed the bill, and in the course of his remarks said, (p. 206):

"Then supposing a married woman has a separate life estate, real or personal property, with a power by will only, to appoint the corpus after her death.

If she exercises the power the whole question comes to this; does she thereby make the corpus her *separate estate?* If she does not, of course her creditors cannot come upon it. Even assuming that you can apply the doctrine applicable to a male person, that if he exercises such a power he makes the estate appointed his assets; assuming that a married woman can so make the estate her estate, still, how can she make an estate which is to take effect only after her death her separate estate?

It is inconsistent with the very principle of separate estate; I confess I cannot understand on what ground or principle that can be contended."

In the case of Vaughn *v.* Vanderstegen, 2 Drewry 165 (190 and 191) the court declares, "No case can be found in which the court has applied the property appointed by the will of a married woman in exercise of a power, to the payment of her debts," and the reasoning upon which the Lord Chancellor (Cranworth) arrives at this decision, admits of but little question, being clear, logical, persuasive and conclusive.

Also Holeday *v.* Peters, 28 Beavens, 354.

V.

The goods for which payment is claimed were necessaries furnished for the family of Mr. and Mrs. Dodge, living together, man and wife, and as such was undoubtedly *his* debt primarily.

But it is claimed that the husband was insolvent; this is denied and (record, p. 9) the evidence shows that during nearly all the time covered by the alleged indebtedness from 1870 to 1876, Mr. Dodge was in employment (printed record, p. 19) and the burden lay upon the appellee to show, if it could be shown, that his income from the various employments enumerated was insufficient to maintain his family, consisting of himself and wife, two adult children and one minor child, with no house-rent to pay. It is further claimed that there is not sufficient evidence, if any, in the record upon which to base a promise or engagement on part of Mrs. Dodge to assume or pay the alleged debt, by all the rules of law primarily that of her husband.

J. HOLDSWORTH GORDON,
Counsel for Appellants.

114-430

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

FRANCIS DODGE *et al.*, *Appellants*,
vs.
THOMAS KNOWLES, *Appellee*.
No. 156.

Statement of the Case.

J. HOLDSWORTH GORDON,
Counsel for Appellants.

R. O. POLKINHORN & SON, PRINTERS.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

FRANCIS DODGE *et al.*, *Appellants*,
vs.
THOMAS KNOWLES, *Appellee*. } No. 156.

Statement of the Case.

The case comes to this Court on appeal from a decree passed by the Supreme Court of the District of Columbia. The facts of the case are as follows:

Frances I. Chapman being the owner of certain real and personal property in the District of Columbia, and having in contemplation a marriage with one Francis Dodge, did, on the 22d day of January, 1852, execute an ante-nuptial settlement, whereby she conveyed all her estate to said Francis Dodge upon certain trusts. The trust deed provided that the property conveyed should be held by the trustee. (Printed record, page 25, line 14.) * * "From and after the said contemplated marriage has been solemnized, for the sole and separate use and benefit of the said Frances I. Chapman during the term of her natural life, and so as that the same, or any part thereof, or the rents, income and profits thereof, or of any part thereof, shall not be liable for the debts of him, the said Francis Dodge, or in any way subject

to his control or contracts, except so far as is consistent with the provisions of this deed. To permit her, the said Frances, by herself or her attorney, appointed by writing under her hand, to collect and receive all the rents, interests, dividends and annual profits which may from time to time accrue and become payable on the said trust subject and estate, and to dispose of the same as she may see fit for her own separate use and benefit; and if the said Frances shall by any writing under her hand and seal, to be executed in the presence of, and to be attested by two witnesses, order and direct the leasing, or absolute sale of the said real estate, or of any part thereof," * * * "then (printed record, page 25, line 13) the said Francis Dodge and his heirs shall, from time to time, as so required, lease or sell the said real estate, or such part thereof, as the said Frances shall in such writing direct to be leased or sold, to such person or persons, for such price or prices, for such estate or estates and on such terms of payment as the said Frances may by such writing order, direct and appoint, and shall collect and get in the proceeds of any such sale or sales, and shall invest the same in his name as trustee of the said Frances, in such manner as the said Frances may approve and require, and hold the said investments, when made, for the same uses, trusts and purposes, and with the like power and authority, and subject to the like limitations, as are hereinbefore declared of and concerning the original trust subject;" * * * "and (printed record, p. 26, line 14) it shall and may be lawful for the said Frances, notwithstanding her coverture, by any will or testament to be signed, sealed and published by her as her will or testament, to give, devise and dispose of her said estate, real and personal, in such manner, to such person or persons, and for such estate or estates as she may see fit; and the said Francis Dodge and his heirs, executors and administrators shall hold and dispose of the said estate, or such parts thereof, as

the said Frances may by any such will or testament give, devise and dispose of to any person or persons for the use of such person or persons, according to the direction and appointment in such will or testament contained."

The contemplated marriage was solemnized soon after the execution and delivery of the above in part recited deed.

Frances I. Dodge (wife) departed this life on January 25th, 1876, leaving a last will and testament and a codicil thereto (printed record, pp. 30 and 31), bequeathing and devising her estate to Francis Dodge in trust for certain of her children, the said will and codicil being made, as alleged by testatrix, by virtue of the power of appointment reserved to her in the deed of January 22d, 1852. (Printed record, page 30.)

No provision was made in the will or codicil for payment of debts. Administration was duly had upon the personal property of the decedent, and among other alleged creditors was the appellee, Thomas Knowles.

The personal estate of decedent was ratably distributed among the several claimants, and being exhausted, the appellee Knowles, filed a bill in equity (printed record, page 1,) setting forth the above ante-nuptial deed, asking for the sale of the real estate of the decedent, and application of the proceeds arising from such sale to the liquidation of the balance due upon his alleged claim, and upon the claims of such other creditors as might contribute to the cost of the proceeding.

The bill alleges, that during the year 1876, and for several years theretofore, the said Frances I. Dodge, being indebted unto the said Knowles (printed record, page 2,) in a large sum of money for groceries and other articles of food, by him furnished to her, on the credit of her sole and separate estate, for the maintenance of herself and her children, and her said husband, the said Francis Dodge being insolv-

ent, and entirely without property or estate, caused said Francis Dodge for her, he signing the same as "trustee for Fannie I. Dodge," to make and deliver to the said plaintiff, or to his order, four (4) promissory notes. * * "all which (printed record, page 3,) said indebtedness said Frances I. Dodge declared was to her sole separate estate, upon the faith of which it was incurred, it having been represented to the said plaintiff, that her intention to fully secure the same by a proper conveyance in trust, had been from time to time, before her death, prevented by her physical condition."

The plaintiff prayed that the real estate of the decedent be decreed to be sold for the payment of his debt, and such others as might be found to be chargeable thereon. (Printed record, page 4.)

The defendants, Ella S. Dodge, Maggie D. Addison, and Forrest Dodge, in their answer (printed record, page 8) deny that said notes are a lien upon any of the real estate mentioned in the bill. They deny that the alleged indebtedness was incurred in reference to the separate estate of said Frances I. Dodge, or that she had promised to secure the payment of the same. They deny that at the time said notes are alleged to have been made, said Francis Dodge was insolvent or unable to pay his debts—they deny that the said Francis Dodge, a trustee for Frances, I. Dodge, acting under the provisions of the trust deed of 22d of January, 1852, was authorized to sign and deliver said notes. The answers of the other defendants are formal.

Issue was joined, testimony taken, and the cause being heard by the Special Term, the bill was dismissed. On appeal the court in General Term reversed the decree passed in Special Term, and decreed (printed record, page 40),

> "That the claim of said plaintiff, as stated in the bill in this cause filed, is hereby decreed and adjudged to be a lien and chargeable upon all and singular the real and

personal estate conveyed by Frances I. Chapman by deed dated on the 22d of January, 1852, and recorded among the land records for the said District in Liber J. A. S., No. 36, at pages 452, &c., of said records, upon said original trust, subject as also upon all substitutions and reinvestments thereof."

From this decree appeal was made to this Honorable Court by the children and heirs and devisees of Frances I. Dodge.

Points.

It is contended that the appellee has no lien upon the real estate named, for his alleged claim.

I.

The deed of settlement declaring particular modes in which Frances I. Dodge might have disposed of the real estate made the subject of the trust, her power was limited to those modes to the exclusion of any and all others.

The question as to whether a *feme covert cestui que trust* could dispose of her beneficial interest in the trust property in any other mode than that prescribed by the instrument creating the trust, where she was not in terms restrained from so doing by the instrument, has been the subject of much discussion. But it is respectfully submitted that whatever may be the English rule on the subject, the doctrine favored by the American courts has been that she can only dispose of the estate in the mode pointed out in the declaration of trust.

The court below seems to have been largely if not principally influenced in its decision in this case (1 Mackey, 66) by the opinion of the Court of Errors in New York (1820)

n the case of *Jacques* vs. *The Methodist Episcopal Church*, (17 Johnson Report, 548), reversing a decree of the Chancery Court rendered by Chancellor Kent, and reported in 3 Johnson Chancery Reports, 77. Chancellor Kent, in the cause referred to, after carefully reviewing all the English decisions at great length, says (page 113):

> "Instead of holding that the wife is a *feme sole* to all intents and purposes as to her separate property, she ought only to be deemed a *feme sole sub modo*, or to the extent of the power clearly given by the settlement. Instead of maintaining that she has an absolute power of disposition, unless specially restrained by the instrument, the converse of the proposition would be more correct, that she has no power but what is specially given, and to be exercised only in the mode prescribed, if any such there be. Her incapacity is general, and the exception is to be taken strictly and to be shown in every case, because it is against the general policy and immemorial doctrine of the law."

It is true, as above stated, that the opinion of the learned Chancellor was overruled by the Court of Errors; but we quote his language that this Court may see how closely his doctrine has been followed by the subsequent decision of the highest courts of our land, both the opinion of Chancellor Kent and the overruling opinion of the Court of Errors being before them for investigation, consideration, and advisement.

This doctrine of Chancellor Kent and the position taken by the appellants has been sustained by the courts of Illinois.

In *Swift* vs. *Castle*, 23 Ills., 132, a deed was executed by Edward H. Castle and others to one Whitlock in contemplation of the marriage of said Castle to Emeline Bennett. The deed conveyed certain real and personal property to Whitlock in trust for said Emeline, and provided—

> "That the said trustee shall have power, with approbation or at the request of the said Emeline Ben-

nett, expressed in writing, to sell and dispose of the said trust estate or any part of it, and the proceeds to invest in other personal or in real estate, or deliver the same over to said party of the first part, according to the written directions of the said Emeline Bennett. And the estate so purchased shall be had and held by the trustee for the uses and purposes, and upon the same trusts as are declared in and by this indenture of and concerning the property and estate above mentioned, and may be sold and the proceeds reinvested from time to time in trust in manner aforesaid."

The trustee, Whitlock, was removed and one Filkin's substituted in his stead. Out of the proceeds of the trust property, Filkin's purchased two parcels of land and held the same subject to the trusts in the ante-nuptial deed, as the separate property of Emeline Bennett, then Emeline Castle, the contemplated marriage having taken place. Subsequently the trustee, Filkins, and the said Emeline Castle and her husband, united in two deeds of trust conveying said two parcels of land to one Swift, to secure the payment of divers promissory notes of the husband, Castle. The bill filed in the cause was to set aside these two deeds upon several grounds, one of which was that they were not authorized by the powers contained in the ante-nuptial deed, and the trustee had no authority to execute them, as the sale was not made for the purpose of reinvesting the proceeds in other property, or for the purpose of delivering over the proceeds of the sale to her.

The court held the deeds to be inoperative and void, and that Mrs. Castle and her trustee were not bound by them.

The deed before the Supreme Court of Illinois and that before the court in this case, are very similar in terms. In both the trustee is to collect, from time to time, the rents, &c., of the estate, and pay the same over to the *cestui-que-trust.* He is also authorized to sell and convey the property with written consent and approbation of the *cestui-que-*

trust, and *to invest the proceeds of such sale, and hold such re-investments for the same uses and purposes and upon the same trusts declared in the deed of settlement.* In both there appears an undoubted intention to restrain a diminution of the principal trust fund. A mode of alienation is prescribed, the purpose for which the same should be made and a designation of the disposition of the proceeds of sale when made.

The court, after a general review of the American cases, says (page 147):

> "From these various cases it is manifest to our minds that the weight of authority clearly is, that a married woman can only convey her trust property in the manner authorized, and for the purpose specified in the instrument creating the trust, if it contains any such provisions." * * * "When the instrument creating the trust confers upon her the power to sell or dispose of the trust estate, she, for the purpose of executing the trust, is an attorney in fact, and all her acts, to be legal, must, as those of any other attorney in fact, strictly conform to the powers delegated, and any deviation from its provisions will render the act void for want of authority. No reason is perceived why a court of equity should confer upon her additional powers to those contained in the instrument creating the trust, more than it should upon any other attorney in fact." * * "When the instrument creating the trust provides that it may be disposed of by one mode it excludes all others."
>
> Also, *Conkling* vs. *Doul*, 67 Ills., 355.

The same doctrine has been held in Virginia. In *Williamson* vs. *Beckham*, 8 Leigh 20, the Court of Appeals declared that *a feme covert* holding separate property in real estate by deed or will which empowers her to dispose of it in a designated mode, cannot make a disposition in any other, though other modes be not expressly negatived by the deed or will. In this case, the deed under consideration recited that a marriage was intended to be shortly had

between Fontain Beckham and Ann O. R. Stephenson, and all of Beckham's property was conveyed to a trustee to be held after the marriage in trust for the sole and separate use and benefit of the said Ann, to permit her to receive the interest and profits of said real estate, and "have the power, by a written instrument under her hand and seal, and attested by three or more witnesses, in the nature of an appointment of a will and testament, to dispose of the said property, real and personal, to whomever she may please, as fully as if she was a *feme sole*." The marriage took place. Subsequently the said Ann, by deed signed and sealed by her, and attested by three subscribing witnesses, appointed all the property which had been conveyed for her benefit by the deed of marriage settlement, to the sole and separate use of her husband, and to be subject to his sole and separate control and disposal. Later Beckham, the husband, filed a bill against Carter Williamson, setting forth articles of agreement between himself and Williamson, by which he had agreed to convey to Williamson part of the property so conveyed to him (being part of the property named in the marriage settlement). That Williamson had declined to accept a conveyance, on the ground that Beckham could not give a good title, and the bill prayed that his title might be declared good and sufficient to the premises in question. The lower court held, that under the settlement, the wife had free and absolute right of disposition, either by deed or will, that a valid and perfect title to the premises might be conveyed to the defendant by Beckham and wife. Upon appeal, the Court of Appeals reversed the decree and dismissed the bill.

Says the court, page 24:

> "It is admitted, even by the English cases, that if the deed or will, by which the separate estate is created, expressly negatives any other mode of disposition than that which itself prescribes, the general power of dis-

> position is taken away. Now it is singular that the courts should in any of the cases have rejected the well established principles or maxim of law, *expressio unius exclusio est alterius*. When the contracting parties expressly provide the manner in which the disposition shall be made, what else can be inferred than that the *feme covert* is to be confined to the mode prescribed."

And again, page 27, Judge Tucker, delivering the opinion, says:

> "Upon the best reflection I can give this matter, I am of opinion that a *feme covert*, holding separate property in real estate by deed or will prescribing a peculiar mode of disposition, cannot dispose of it in any other mode, although the deed or will does not negative such other mode expressly."

The courts of Maryland, whose decisions have ever been regarded as exercising a peculiarly controlling influence over the jurisprudence of this District, hold the same doctrine.

In *Cooke* v. *Husband's*, 11 Maryland, 492, the court says:

> "In Maryland the law is settled, that when a mode of alienations or of appointment is provided, it operates as a negation of any other mode, and is a paramount law governing and controlling every contract in relation to it."

Again, in *Williams* vs. *Donaldson*, 4 Maryland, ch. 414, involving the construction of a marriage settlement vesting the property of the intended wife in trustees, with power to "sell, convey, transfer, and dispose of said property and lay out the proceeds in new stocks, funds, securities, or real estate, to be held upon the same trusts and for the same intents and purposes as those which shall have been sold." Such sales to be made "with the consent and approbation

of the wife and her husband, testified in writing," the wife and husband directed the trustees to pledge so much of the personal estate as might be necessary to secure a loan of $16,000, to be used by the husband in his business. The trustees declined, on the ground of no authority under their deed, and a bill was filed against the trustees asking for a decree requiring them to assign and transfer as requested. The chancellor, in refusing the decree, says, (after a review of the cases on this subject,) page 414:

> "The American doctrine as established by these cases and others, is, that the power of a *feme covert* over her separate estate must be exercised according to the mode prescribed by the instrument under which she becomes entitled to the property, and that to confine her to that particular mode the instrument need not specially restrict her to it. That she has no power over her separate estate, but such as has been specifically given to her, and in exercising the power of disposition she is restricted to the particular mode specified in the instrument under which she takes, when the instrument undertakes to make such specification."

The courts of Pennsylvania hold the same doctrine. In *Thomas* vs. *Folwell*, 2 Wharton, 11, the trust was "to and for the only proper use and behoof of Susan J. Allen, wife of Richard F. Allen, her heirs and assigns forever, and to receive the rents, issues and profits of the same, and pay over the same to the said Susan J. Allen, or to such person or persons, and in such manner as she, the said Susan, shall or may direct, order and appoint, from time to time, and at all times hereafter." The wife undertook by will to dispose of the property—and the Court in determining the matter—denied the right of the wife to so dispose of the property, and say (page 16.)

> "We hold it to be the settled law of Pennsylvania that instead of having every power from which she is

not negatively debarred in the conveyance she shall be deemed to have none but what is positively given or reserved to her."

Also, *Lynes* vs. *Crouse*, 1 Pa. St., 111;
Rogers vs. *Swift*, 4 Pa. St., 93;
Lancaster vs. *Dolan*, 1 Rawle, 231.

Our position has also been sustained by the courts of Georgia, Texas, North Carolina, Rhode Island, South Carolina, Tennessee, and Mississippi, in the following cases:

Weeks vs. *Lego*, 9 Ga., 199–203;
Wylett vs. *Collins*, 9 Ga., 237;
Cartwright vs. *Hollis*, 5 Texas, 169;
Hurdy vs. *Hollis*, 84 N. C.;
Harris vs. *Harris*, 7 N. C.;
Metcalf vs. *Cooke*, 2 R. I., 355, (362.);
Ewing vs. *Smith*, 3 Dess., 417, (454);
Reid vs. *Lamar*, 1 Strob, Eq., 27, (36);
Morgan vs. *Elam*, 12 Tenn., 375;
Ware vs. *Sharp*, 31 Tenn., 489, (495);
Daly vs. *Mitchell*, 9 S. & M., 435, (Miss.);
Montgomery vs. *Bark*, 10 S. & M., 567, (Miss.)

From an examination of the above cases and the general current of authority on this subject, it is undoubtedly the doctrine of this country that a married woman, in such a case as that under consideration has no power to contract so as to charge her separate estate, except she derive such power from the instrument creating her separate property, and that therefore she must be regarded as subject to the disabilities of a *feme covert* when it is not otherwise provided in the instrument—any power she can exercise is derivatively merely.

II.

Even had Mrs. Frances I. Dodge the power to charge her separate estate with the payment of her debts in any other manner than that prescribed by the instrument creating the trust, her general liabilities cannot be satisfied out of such estate unless she has expressly charged the same with their payment; and in many cases it has been held that the intent to charge must be declared in the very contract which is the foundation of the charge.

Burch vs. *Breckenridge*, 16 B. Monroe, 384;
Dale vs. *Robinson*, 51 Vermont, 20 (29);
William vs. *Huguin*, 69 Ill., 214;
Yale vs. *Dederer*, 22 N. Y., 450;
Eisenlord vs. *Snyder*, 61 N. Y., 45 (46);
Wilson vs. *Jones*, 46 Mo., 349 (555);
Corn Exchange Ins. Co. vs. *Babcock*, 42 N. Y., 613.

III.

But even admitting the alleged claim of the appellee to be a debt of Mrs. Dodge for which her separate estate might be declared liable, equity would not decree satisfaction of the *corpus* of the real estate, but only out of the personalty belonging to the estate of Mrs. Dodge in the hands of her trustee at her death, and out of the rents and profits of the realty, were she living, in case of insufficiency of personalty. This is an equitable doctrine, well established, and one recognized from the early case of *Hulme* vs. *Tenant* down to the present time.

It is submitted that while the appellee might by suit have obtained a lien upon the rents during the lifetime of Mrs. Dodge, his power to obtain such lien terminated at her death, and the appointment under the power reserved to her, of the estate to other uses.

In Perry on Trusts (3d Ed.), Sec. 662, it is declared—

> "Determined cases go thus far, that the general engagements of the wife operate upon her personal property, and the rents and profits of real estate when they arise, to the satisfaction of such general engagements; but the courts do not use any direct processes against the separate estate of the wife, and the manner of reaching her separate property is by decree to bind the trustee to apply the personal estate in their hands and the rents and profits of the real estate, according to the justice of the engagements to be carried into effect."

In the case of *Hulme* vs. *Tenant*, 1 Brown's Chancery Reports, 14 (Perkin's Ed.), regarded as the great authority on this subject, upon the marriage the estates of the wife had been conveyed to trustees; one part consisting of freehold and leasehold lands, in the trust to receive and pay the rents and profits to the wife, for her separate use, and to convey the estate itself to such use as she, by her last will in writing, or by deed or writing under her hand and seal, executed in the presence of two witnesses, should appoint; other parts to be sold and, out of the proceeds £1,000 to be laid out according to the directions of the wife, the interest and profits to be paid to her and the principal to her or her order, by note or writing, under her hand.

The £1,000 had been raised and the whole, or the greater part, applied, so that the question in the cause was with respect to the remedy against the other estate. The husband borrowed of the plaintiff, Mrs. Hulme, £50 upon his and his wife's bond. Later the wife borrowed £130, paid the interest due upon the former sum of £50, and gave a new bond for the £180.

The bill was filed by Mrs. Hulme against the wife and husband and surviving trustee to recover the sums secured out of the wife's separate estate. The cause had been heard

before Lord Bathurst, who dismissed the bill. Upon rehearing, Lord Thurlow said (page 18):

> "In respect to a *feme covert*, determined cases seem go thus far, that the general engagements of the wife shall operate upon her personal property, shall apply to the rents and profits of her real estate, and that her trustees shall be obliged to apply personal property, and rents and profits, when they arise, to the satisfaction of such general engagements; but this court has not used any direct process against the separate estate of the wife, and the manner of coming at the separate property of the wife has been by decree to bind the trustees, as to personal estate in their hands or rents and profits of the real estate, according to the exigency of justice, or of the engagement of the wife to be carried into execution. I know of no case that has gone further than that."

And this has been the recognized doctrine since the case of *Hulme* vs. *Tenant* to the present time.

The case of *Radford* vs. *Carwile*, 13 West Va., 572, decided in 1878 by the Supreme Court of Appeals, is a most exhaustive treatise on this subject. The opinion covers over one hundred pages, and contains a summary of all the most important cases bearing on this question, both English and American, and while some of the conclusions of the court as to the power of the *feme covert* to charge her separate estate are not, we think, warranted by the cases, we believe that the conclusion as to the extent to which an equitable lien will attach to the separate property of the *feme covert* is sustained by adjudged cases, and in full consonance with the equitable doctrine on the subject.

Says the court, page 682:

> "But those incidents, liability to the payment of her debts and her *jus disponendi*, extend no farther than to all her separate personal property and the rents and

profits of her separate real estate accruing during marriage.

"The *corpus* of her separate estate is in no manner affected by the equitable doctrine of separate estate, which was devised to prevent the acquisition by the husband of his marital rights to all her personal property and the rents and profits of her real property during coverture."

In *Frank & Adler* vs. *Lilienfield*, 33 Gratt., 377 (decided in 1880), a bill was filed for the *sale* of the real estate of the *feme covert* to pay the complainant's debt, a note of the husband alleged to be endorsed by the wife, the court says, page 399:

"I think the English rule, as stated by Lord Thurlow, is correct; and therefore, to satisfy a general enjoyment of the wife, (and by general enjoyment I here mean an engagement made with reference to her separate estate, so as to make it liable in a general sense, but which does not amount to a *specific lien* of any sort upon such estate,) the personal property, when the interest of the wife is absolute and there is no restraint upon the alienation of such property imposed by the instrument creating the separate estate, may be sold by decree of the court, and, under like conditions, the rents and profits of the separate real property may be subjected, and to that end, following the analogy of the law so far, such real estate may be leased from time to time, by order of the court, until the debt out of the rents be discharged; but in no case I think should the real estate, or any part thereof, be sold by decree to satisfy the debt of the wife unless such debt be one secured by *specific lien* on such estate. If the creditor desires to bind the real estate in such a way as shall authorize the sale of it for the satisfaction of his debt, let him take the appropriate security within the power of the wife to give. If he fails to do so, equity cannot provide him a security which he has neglected to provide for himself."

Also, *Palmer* vs. *Rankins*, 30 Ark., 771;
Lewis vs. *Yale*, 4 Fla., 418, (425);
Weinberg vs. *Rempe*, 15 W. Va., 829.

IV.

The Court below (page 71) says:

> "Assuming that Knowles has a valid claim against the wife, do the children take this property subject to her debts, or do they take it discharged of such obligation? Now, if Mrs. Dodge had failed to execute the power of appointment, there would have been no doubt about it. The creditor would have lost his claim, because that would have been an indication that she had elected to claim for herself nothing more than a life estate. But having availed herself of that power, the question is whether it does not bring the whole estate under obligations, and we think it does.
>
> "There are many authorities upon this subject, but I shall read merely from Williams on Executors, Vol. 2, p. 1522, 5th Am. Ed., where they can all be found, and they fully sustain the doctrine there enunciated:
>
> "'Where a man has a general power of appointment over a fund, and actually exercises this power, whether by deed or will, the property appointed shall form part of his assets, so as to be subject to the demands of his creditors at his death, in preference to the claims of his legatees or appointees.'"
>
> "The execution of the power of appointment changes what would otherwise have been nothing but a life estate into an estate of inheritance, and renders it subject to the debts of the appointor. This, then, was an estate of inheritance, and the devisees under the will are to be postponed to the claims of the creditors."

Here the Court distinctly declares that but for the exercise, by Mrs. Dodge, of the power of appointment, "the creditor would have lost his claim." That then her estate would have been merely a life estate, and the *corpus* of the estate would not be responsible. But it is claimed by appellant that a married woman with a separate estate for life and a general power of appointment does not, by exercising the power, make the fund or property assets for pay-

ment of her creditors. The same rule cannot apply that applies in the case of a male who labors under no disability as to making contracts.

A married woman cannot make any cohtract, in fact, beyond her separate estate. The existence of a *separate estate must precede the contract.* How, then, can she bind estate which can only be converted into her estate, if it can be so at all, by her will taking effect after her death ?

The general doctrine of powers on this subject does not apply, and it has been so heid by the highest courts of England.

The case of *Blatchford* vs. *Woolley* (1863), 2 Drewry & Smale, 204, in all respects bears a strong resemblance to the case now before the Court.

In contemplation of the marriage of Margaret Blatchford, certain personal property was vested in trustees for her life to her separate use, reserving to her a general power of appointment by will, and in default there was a limitation over. Mrs. Blatchford exercised her power of appointment by will, and the bill was filed to have her estate administered, and under the decree creditors came in to prove, and the contention on their part was that the appointed fund was liable to their claims.

The Vice-Chancellor dismissed the bill, and in the course of his remarks said (p. 206):

> "Then supposing a married woman has a separate life estate, real or personal property, with a power by will only, to appoint the corpus after her death.
>
> "If she exercise the power the whole question comes to this: does she thereby make the corpus her *separate estate ?* If she does not, of course her creditors cannot come upon it. Even assuming that you can apply the doctrine applicable to male person, that if he exercises such a power he makes the estate appointed his assets; assuming that a married woman can so make the estate

her estate still, how can she make an estate which is to take effect only after her death her separate estate?

"It is inconsistent with the very principle of separate estate; I confess I cannot understand on what ground or principle that can be contended."

In the case of *Vaughn* vs. *Vanderstegen*, 2 Drewry, 165, (190 and 191), the court declares "no case can be found in which the court has applied the property appointed by the will of a married woman in exercise of a power, to the payment of her debts," and the reasoning upon which the Lord Chancellor (Cranworth) arrives at this decision, admits of but little question, being clear, logical, persuasive and conclusive.

The same doctrine was held by the court in *Hobday* vs. *Peters*, 28 Beavans, 354.

On marriage of Maria Hobday with Peter Joy, a marriage settlement was made by which certain property was conveyed to trustees upon trust for Mrs. Joy for life, for her separate use, without power of anticipation, with remainder to Mr. Joy for life, and, after his death, in trust for such persons as Mrs. Joy should, by deed or will, appoint, and in default for her right heirs.

Mrs. Joy died, having by will executed her power, and thereby appointed her real and personal property to the plaintiff, her son, absolutely. The Master of the Rolls, in passing upon the case, says;

"The proposition may be stated as follows: It is established by *Jenney* vs. *Andrews*, that if a man who has a power of appointing property appoints it by will, that appointed property will be general assets for payment of his creditors. It seems that if a married woman does so, the appointed property will not be applicable to the payment of debts which she may have contracted as a *feme sole*."

V.

The goods for which payment is claimed were necessaries furnished for the family of Mr. and Mrs. Dodge, living together, man and wife, and as such was undoubtedly *his* debt primarily.

But it is claimed that the husband was insolvent; this is denied and (record, p. 9) the evidence shows that during nearly all the time covered by the alleged indebtedness from 1870 to 1876, Mr. Dodge was in employment (printed record, p. 19) and the burden lay upon the appellee to show, if it could be shown, that his income from the various employments enumerated was insufficient to maintain his family, consisting of himself and wife, two adult children, and one minor child, with no house-rent to pay. It is further claimed that there is not sufficient evidence, if any, in the record upon which to base a promise or engagement on part of Mrs. Dodge to assume or pay the alleged debt, by all the rules of law, primarily that of her husband.

J. HOLDSWORTH GORDON,
Counsel for Appellants.

114-430

FILED
APR 24 1885
JAMES H. MCKENNEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 156.

FRANCIS DODGE ET ALS., *Appellants*,

vs.

THOMAS KNOWLES, *Appellee.*

Brief for Appellants.

STATEMENT OF THE CASE.

Motion of appellee—

"To set aside and annul the judgment and decree of this Court, entered in this cause on the 13th April, 1885, and also to dismiss the appeal attempted to be taken in this cause, for the following reasons:

"1st. Because no citation hath been issued or served, the security herein having been taken and accepted at a term of the said Supreme Court of the District of Columbia subsequent to that during which said appeal was prayed,

said Thomas Knowles not having entered a general appearance herein.

"2d. Because the matter in dispute did not exceed the sum of twenty-five hundred ($2500) dollars."

STATEMENT OF PROCEEDINGS IN CAUSE IN SUPREME COURT OF THE UNITED STATES.

This cause was first submitted to this Court by appellants, on printed brief, on January 9th, 1885, no appearance having been entered for the appellee. On January 19th, 1885, the Court announced, through Mr. Justice MILLER, acting Chief Justice, that the questions raised by the brief were important, and that the Court had determined to require re-argument of the cause; and, in view of the fact that the appellee was a citizen of the District, he would be notified; the re-argument to be either orally or printed; if the latter, to be filed on or before March 2d, 1885. This order was, by the Clerk of this Honorable Court, communicated to counsel for appellants and to the appellee by mail. On Monday, March 2d, as required by the order of the Court, the appellants, through counsel, appeared to respond to the order for re-argument, and submitted a *revised* brief. No appearance was entered for the appellee, he having, by letter dated February 28th, and received by the Clerk on the morning of March 2d, the day appointed by the order of the Court for re-argument, in rather forcible language for a response to an order from the

highest tribunal in the land, declared that he refused to permit his appearance to be entered in the cause for the purpose of re-argument, or for any other purpose whatever. The Court, after considering the cause, on April 13th, 1885, rendered judgment for the appellants, and ordered dismissal of the bill, with costs.

Points for Appellants.

The motion should be denied.

The decree appealed from was made by the Supreme Court of the District of Columbia, on 23d February, 1881, and an appeal prayed for in open court, and in presence of counsel for appellee, and then and there allowed. (Printed Record, p. 40.)

It is true no appeal bond was approved or filed until November 5th, 1881, and after the ending of the General Term of the court at which the appeal was prayed and granted. But a bond was approved and by a justice of the court. The certified record was filed in this court at its next term, after the appeal below.

I.

This court has repeatedly held that no citation is necessary where the appeal is prayed and granted in open court, and at the term at which the decree

appealed from is rendered—that the parties to the cause are bound to take notice of the appeal.

In *Riley*, appellant, vs. *Lamar et als.*, appellees, 2d Cranch, 343, this question was raised, and on page 349 it is stated:

> "The Chief Justice stated it to be the opinion of the court, that the appeal having been prayed, pending the court below, a citation was not necessary; and therefore the case is properly before the court."

The same was decided in *Brockett et als.* vs. *Brockett*, 2 How., 238 (241). *Railroad Co.* vs. *Blair*, 100 U. S. 661 (662). But it is claimed that the appeal was not *perfected*, because the bond was taken and accepted at a term subsequent to that at which the decree appealed from was rendered. The order allowing the appeal did not provide for a bond as a part of the appeal, and the *praying of appeal and allowance* by the court perfected the same.

The bond is not an indispensable part of an appeal, and the approved bond of November 5th, 1881, related back to the appeal of February 23d, 1881. This has been decided by this court.

In *Edmonson* vs. *Bloomshire*, 7 Wall, 306, Mr. Justice MILLER says (page 311):

> "It is said that the appeal of 1860 was not perfected until the bond was given under the order of November 14th, 1865, and that until this was done there was in fact no appeal which required the transcript to be filed. The answer to this is, that the prayer for the appeal, and

the order allowing it, constituted a valid appeal. The bond was not essential to it. It could have been given here, and cases have been brought here where no bond was approved below and the court has permitted the appellant to give bond in this court.

"In the case of *Seymour* vs. *Freer*, the Chief Justice says, that if, through mistake or accident, no bond, or, a defective bond, had been filed, this Court would not dismiss the appeal, but would permit a bond to be given here. And in all cases where the Government is appellant, no bond is required. It is not, therefore, an indispensable part of an appeal that a bond should be filed; and the appeal in this case must be held as taken on the 26th day of May, 1860."

The allowance of an appeal in this cause did not specifically provide for a bond as part of the condition of the appeal (Record, page 40), and, therefore, the failure to give bond at the time did not affect the *perfectness* of the appeal. No decision of this Court can be found in which the Court has dismissed an appeal, simply because the bond was given at a time subsequent to the appeal, or decided that citation was necessary in such a case, unless the decree in terms provided a bond as part of its perfecting, or because of some irregularity in the approval, where the bond was for appeal merely, and not intended to act as a *supersedeas*. And upon examination it will appear that in all the cases in which this Court has passed upon this question,

the giving and acceptance of a bond has been a prerequisite, and part of the perfecting of the appeal, which was not the case in the present appeal.

Applying the *dictum* of Court in *Edmonson* this vs. *Bloomshire* (7 Wall., 306), the appeal in this cause was undoubtedly *perfected when prayed and granted in open court.*

But even had this motion been made at the proper time—and not when the appellee is clearly in default—and had the Court been inclined to hold that under the circumstances of this case, a citation was necessary, the appeal would not have been dismissed under the practice of the Court.

In *Railroad Company* vs. *Blair*, 100 U. S., 661, the decree appealed from was rendered in the December Term of the Circuit Court for 1878. The appeal was allowed in April, 1879, during the March term. Motions was made to dismiss the appeal. The Court said—Mr. Justice WAITE—(662):

> "An appeal otherwise regular would not probably be dismissed absolutely for want of a citation, if it appeared by clear and unmistakable evidence, outside of the record, that the allowance was made in open court at the proper term, and that the appellee had actual notice of what had been done. The records of the court in this case show an allowance of the appeal in court where the appellees were present by their solicitors. It was, however, at a term subsequent to the rendition of the decree and under the practice a citation was necessary to bring the appellees to this Court. The case was docketed promptly here at the term to

> which the appeal was returnable; and as the appellants might well have supposed that a citation would be waived, we will not dismiss the appeal absolutely, but apply the rule acted upon in *Dayton* vs. *Lash*, (94 U. S., 112,) and 'grant summary relief' 'by imposing such terms upon the appellants as under the circumstances may be legal and proper.' "

And in *Richards* vs. *Mackall*, Jr., No. 1085, October Term, 1884, the Court determined on a motion to dismiss, where the appeal was allowed in Special Term, after the termination of the General Term, in which event citation and service was required, because the allowance was not made at the term in which decree was rendered, the bond being also approved after the term had ended; that "even if the citation was not served in time * * * the failure to serve will not work a dismissal of the appeal."

See also *Dayton* vs. *Lash*, 94 U. S., 112.

In the case now before the Court it does not appear by "clear and unmistakable evidence in the record," as well as outside of the record, that the allowance was made in open court, at the *proper time*, and that the appellee had actual notice of what had been done, and that his counsel was present in court. (See also affidavit of appellee filed with motion.) That the appeal was regular in all particulars, save non-filing of bond, if that is an irregularity.

But the appellants claim that even had a citation been necessary, the order of this Court of January 19th was equivalent to such citation. A citation is merely an official call or notice given to a person to appear. Such an official call or notice was given to the appellee, and he declined to respond to the call. He received notice from this Court, through its official medium, the Clerk, that it had *ordered* a re-argument, and that such re-argument should be orally or by brief on or before March 2d, 1885. He admits that he received such notice, and in his reply refused to obey, and not without full knowledge of the responsibility he assumed, for his action he declares is by and under the advice of counsel—the same, we may presume, who represented him below and who represents him here.

From the 19th day of January to the 20th day of April he fails to come forward, ignores the order of the Court, permits the cause to proceed, and after judgment rendered appears and makes a motion, which should have been made in response to the order of January 19th. It is trifling with the dignity of this Honorable Court, and entitles him at this late day to no consideration at the hands of an Equity Court, which, by its solemn judgment, after mature consideration, has decreed that a wrong was done by the granting of the decree below. It is certainly a case where, even if the Court found any irregularity, they might very justly "grant summary relief"—*Dayton* vs. *Lash*—by sustaining the judgment already rendered.

II.

As to the second ground of the motion to dismiss but little need be said.

The appellee, in his bill filed below, states his claim (page 4, printed record) to be at that time, Dec. 17, 1878, twenty-six hundred and thirty-four $\frac{97}{100}$ dollars, subject to a credit of one hundred and seventeen dollars ($2,634.97 less $117), and the Court in its decree (page 40) orders that "the claim of said plaintiff, as stated and in the bill in this case filed, is hereby decreed to be a lien," &c.

The amount in dispute, therefore, was far beyond the sum of twenty-five hundred ($2,500) dollars, and the decree appealed from established that claim. The fact that the appellee has *realized* but a small portion of his claim, does not affect the jurisdiction of the Court. Had his judgment been for $20,000 and he realized *nothing*, he might with equal propriety and logic claim, that there would be *nothing* to appeal from. The logical conclusion to which such reasoning would inevitably lead, demonstrates the legal absurdity of the proposition. The value in controversy must be determined by the amount claimed in the bill.

Farmers' Bank vs. *Hooff*, 7 Peters, 168;
U. S. vs. *McDaniel*, 6 Peters, 634;
Schacker vs. *Hartford Fire Ins. Co.*, 93 U. S., 241;
Rail Road Co. vs. *Trook*, 100 U. S., 112.

In conclusion, it is submitted that, as the mover of this motion admits that he has received certain sums of money by virtue of the decree passed below, it would not be asking an improper exercise of the equity powers of this Honorable Court to pray that, in the mandate reversing judgment below and dismissing the bill, an order may be incorporated for the return of the moneys, with interest, so received by appellee, and thus obviate the necessity of a suit for the recovery of the same.

J. HOLDSWORTH GORDON,
Counsel for Appellants.

114-430

In the Supreme Court of the United States.

October Term, 1884.

FRANCIS DODGE ET AL., APPELLANTS,
vs.
THOMAS KNOWLES, APPELLEE.
No. 156.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Motion filed April 20, 1885, to annul decree entered April 13, 1885, and to dismiss for want of jurisdiction.

BRIEF ON MOTION FOR THOMAS KNOWLES.

CHARLES M. MATTHEWS,
Solicitor and of Counsel for Thomas Knowles.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1885.

In the Supreme Court of the United States.

October Term, 1884.

No. 156.

FRANCIS DODGE ET AL.,
APPELLANTS,
vs.
THOMAS KNOWLES,
APPELLEE.

Appeal from the Supreme Court of the District of Columbia.

Motion filed by leave of Court April 20, 1885, by Thomas Knowles, to set aside and annul decree entered herein April 13, 1885, and to dismiss appeal attempted to be taken herein—

1. Because no citation was issued or served herein, the appeal having been prayed in open court February 23, 1881, during the January Term, 1881, of said Court, in General Term, and the bond for costs being given November 5th, 1881, during the subsequent October Term, 1881, of said Court, and no citation having been issued or served, and no general appearance entered herein by Knowles.

2. Because the matter in dispute herein does not exceed the sum of $2,500, the minimum of jurisdiction on appeal from the Supreme Court of the District of Columbia.

POINTS IN BEHALF OF MOTION.

I.

THE COURT CAN ENTERTAIN THIS MOTION.

In *Ex-parte* Andrew Crenshaw, 15 Peters, 123, Crenshaw, against whom a judgment had been given at a former term, never appeared to the appeal; appellant's argument having however, been heard, under the belief that Crenshaw had been served. On his motion, and it appearing that he "was not cited to appear *in the manner required by the act of Congress*," Taney, C.-J., declared that "it was very clear that the case was not legally before us at the last term;" the decree was annulled and the mandate which had been issued was revoked, and the inferior Court to which it had been directed so notified.

In Bank *vs.* Moss, 6 Howard, 39, Woodbury, J., said:

"So a mistaken entry of a mandate, in a case where the parties were not at all before the Court, may be revoked at a subsequent term, the hearing having been irregular and a nullity."

II.

NO APPEAL HAS EVER BEEN PERFECTED HEREIN.

The appeal having been prayed in open court, Feb. 23, 1881, (Record, p. 40,) no citation is necessary.

The Clerk of the Supreme Court of the D. C. certifies (p. 5, with motion) that this appeal was taken during the January Term, 1881, of said Court, sitting in General Term, which term ended April 13, 1881. He also certifies that the September Term, 1881, of that Court begun September 26, 1881, and ended January 18th, 1882, during which term, on November 5th, 1881, (Record, p. 40,) the bond for costs

was given herein, but no citation signed by the Justice taking the security or other Justice, as required by Sec. 1000, Rev. Statutes U. S., was issued, nor was any citation served. (See affidavit of Knowles, with motion, p. 4, and Clerk's certificate, with motion, p. 5.)

This bond having been taken after the term at which the appeal was prayed, a citation was necessary, and no appeal has been perfected.

The bond was a necessary part of the appeal.

Without citing from the numerous earlier decisions of this Court, attention is called to its recent utterances.

In Guion *vs.* Ins. Co., (109 U. S., 173,) Mr. Chief-Justice Waite, in dismissing an appeal prayed by one not a party, says:

"But if he is, he has never perfected an appeal by giving the necessary security."

Also in Killian *vs.* Clark, (111 U. S., 784,) the same Chief-Justice says:

"The appeal of May 22d, 1878, became inoperative by reason of the failure to give necessary bond and docket the case here during the October Term, 1878."

Citation was necessary.

In Sage *vs.* R. R. Co., (96 U. S., 715,) Waite, C.-J., says:

"The statute makes no provision in terms for the form of the allowance of an appeal, (Rev. Stat., sect. 692,) but as there can be no appeal without the taking of security, either for costs or costs and damages, and this is to be done by the Court, or a judge or justice, the acceptance of the security, if followed when necessary by the signing of a citation, is, in legal effect, the allowance of an appeal. If

the security is given and accepted in open Court during the term at which the decree appealed from is rendered, no citation is necessary; because the parties being presumptively present during the whole term, are charged with notice of all that is done affecting their interests. Whenever, therefore, security for an appeal is accepted during the term, an appeal is allowed. If the security is taken out of Court, and after the term, a citation should be issued to bring in the parties unless they voluntarily appear; for until the security has been accepted the allowance of an appeal cannot be said to have been perfected."

In Bank *vs.* Omaha, (96 U. S., 738,) Waite, C.-J., quoted from Sage *vs.* R.R., (96 U. S., 715,) with approval.

In R.R. Co. *vs.* Blair, (100 U. S., 662,) Waite, C.-J., says:

"The practice only dispenses with a citation when the appeal is taken and perfected in open Court during the term at which the decree complained of is actually entered, and to be technically sufficient, so as to render a citation unnecessary, the taking of an appeal should in some form appear on the records of the Court."

In Hoskins *vs.* R.R., (109 U. S., p. 107,) Waite, C.-J., says:

"If the appeal is allowed in open Court the security may be taken by the Court, and no citation is necessary; but if the security is not given until after the term is over, a citation must be issued and served."

In Peugh *vs.* Davis, (110 U. S., 229,) Waite, C.-J., says:

"We decided in Railroad *vs.* Blair (100 U. S., 661,) that if an appeal was allowed by the Court during the term at which the decree was entered, and the bond was not executed until after the term, a citation was necessary."

This lack of citation cannot be regarded as a mere technicality.

In *Ex parte* Crenshaw, (15 Pet., 123,) Taney, C.-J., at January Term, 1841, declared that "a case was not legally before" the Court, because Crenshaw had "not been cited to appear in the manner required by the act of Congress."

In U. S. *vs.* Curry, (6 Howard, 112,) Taney, C.-J., at December Term, 1847, said:

"But there was no citation to adverse party to appear at that time, and consequently the case was not removed to this Court upon that appeal. It has been said that this objection is a mere technicality, and may be regarded rather as a matter of form than of substance. But this Court does not feel itself authorized to treat the directions of an act of Congress as it might treat a technical difficulty growing out of ancient rules of the common law. The power to hear and determine a case like this is conferred upon the Court by acts of Congress, and the same authority which gives the jurisdiction has pointed out the manner in which the case shall be brought before us, and we have no power to dispense with any of these provisions nor to change or modify them. And if the mode prescribed for reviewing cases by writ of error or appeal be too strict and technical, and likely to produce inconvenience or injustice, it is for Congress to provide a remedy by altering the existing laws, not for the Court. And as this appeal has not been prosecuted in the manner directed, within the time limited by the acts of Congress, it must be dismissed for want of jurisdiction."

Nearly forty years later, in Hoskins *vs.* R.R., (109 U. S., 107,) Waite, C.-J., said:

"We have no jurisdiction in this case. The appellee has not appeared, and has never been served with a citation. Unless an appellee voluntarily appears, we cannot proceed

against him if the record does not show affirmatively that he has been brought within our jurisdiction *by proper notice.*"

There was no voluntary general appearance entered in this cause.

Such appearance would have waived citation.
Ex parte Crenshaw, 15 Pet., 123.
Sye *vs.* R.R., 96 U. S., 715.
Hoskins *vs.* R.R., 109 U. S., 107.

The notice sent Jan. 21, 1885, (under the order of this Court, made Jan. 19, 1885,) to Thomas Knowles that this case "was ordered for reargument orally or on printed briefs, to be filed on or before March 2d," signed "James H. McKenney, Clerk, per J. D. M.," cannot be regarded as the notice "required by the act of Congress," (15 Pet., 123,) or as "the proper notice" or "citation" required, according to Waite, C.-J., in Hoskins *vs.* R.R., 109 U. S., 107. He had never appeared, and in response to this notice *claimed that the appeal herein had never been perfected, or declined to enter an appearance, and so notified the Clerk of this Court.*

If this notice could be regarded as a citation it came too late as a means of perfecting the appeal. The appeal should have been taken within two years from Feb. 23, 1881, the date of the decree; this notice issued Jan. 21, 1885, nearly four years thereafter.

In Killian *vs.* Clark, (111 U. S., 784,) Waite, C.-J., says:

"The appeal of May 22d, 1878, became inoperative by reason of the failure to give necessary bond and docket the case here during the October Term, 1878, (Grigsby *vs.* Purcell, 99, U. S., 505,) and the acceptance of the bond in Oc-

tober, 1881, cannot have the effect of an allowance of a new appeal, because it was more than two years after the decree had been entered."

A citation can only be signed by a judge or justice below, the clerk of the inferior Court not even being allowed to sign.

R. S. U. S., sect. 1,000.
Babbitt *vs.* Finn, 101 U. S., 11.
O'Reilly *vs.* Ewington, 96 U. S., 724.
Hoskins *vs.* R.R., 109 U. S., 107.

The "summary relief" administered in Dayton *vs.* Lash, (94 U. S., 112,) has never been attempted where the time limited for perfecting the appeal has passed, and no case can be found where the Court has undertaken to supply, by such a notice as has been issued in this case, the want of citation only lawful as signed by the Justice of the inferior court.

It certainly cannot be contended that this Court, acting on appeal, can issue original process, nor that an appellee is bound by other knowledge of an appeal than that given by the notice required by law.

It not appearing from the record that the appellee had been duly cited, the suggestion by Knowles that no appeal had been perfected, and his reply to the Clerk put this Court upon an inquiry, which it is at liberty to make *sua sponte*.

III.

THE MATTER IN DISPUTE DOES NOT EXCEED THE SUM OF $2,500.

It is true that the sum set out in the bill (see Record, p. 2,) amounts to $2,271.60, and interest. That sum, however, is alleged to be due by Frances J. Dodge, the mother of the

appellants, Forrest Dodge, Maggie D. Addison, and Ella S. Dodge.

No personal decree is sought against the appellants; the bill (Record, p. 4,) seeks only to subject their interest in certain real estate (as derived from their mother) to the payment of this claim. The decree (Record, p. 40,) is consistent in terms with the prayer of the bill.

The limit of recovery must therefore be the value of the interest in the real estate thus sought to be subjected, and should this value not suffice for the full payment of the indebtedness of Knowles, no recovery is sought or can be had against the children appellants for the unpaid balance.

The proceeding was really in rem. *and not* in personam.

The value of the interest thus subjected is nowhere shown in the record, and while, as said by Waite, C.-J., in Hilton *vs.* Dickinson, (108 U. S., 174,) "until it is in some way shown by the record that the sum demanded is not the matter in dispute, that sum will govern in all questions of jurisdiction; but it is equally true that while it is shown that the sum demanded is not the real matter in dispute, the sum shown and not the sum demanded will prevail."

In this case "the real matter in dispute" is the value of the interest in the land subjected by the decree to the payment of Knowles' claim. That land is shown to be lots 43 and 44, in Beall's addition to Georgetown, D. C., and lots 2 and 3, in square 222, in the city of Washington, D. C. That value is not shown in the record, and under the well-established practice of this Court the same can be shown by affidavits or other proof.

Justice Miller, speaking for the Court in Dakota Co. *vs.* Glidden, (113 U. S., 225,) says: "This Court is compelled, as all courts are, to receive evidence *dehors* the record

affecting their proceeding in a case before them on error or appeal." Again, p. 226: "It is by reason of the necessity of the case that the evidence by which such matters are brought to the attention of the Court must be that not found in the transcript of the original case, because it occurred since that record was made up.

"To refuse to make appropriate evidence of such facts, for that reason is to deliver up the Court as a blind instrument for the perpetration of fraud, and to make its proceedings by such refusal the means of inflicting gross injustice."

The affidavit of Knowles accompanying motion shows (see pages 3 and 4) that since the date of the decree below, Feb. 23, 1881, all the real estate subjected by that decree to a lien for his debt has been sold, and the sum of the proceeds of same adjudged liable under that decree was ascertained to be $1,557.63, and no more, which sum is all that can be received by him herein, and ascertains the full value of the property or "matter in dispute" to be less than $2,500.

In "The Jesse Williamson Jr.," (108 U.S., 310,) a proceeding *in rem.* to recover $27,000 against a vessel; the value of which was agreed to be $2,100, Blatchford, J., said: "In the present case although the libellant may recover $27,000 against the vessel because he demands that amount against her, it is plain that he cannot recover on the stipulation for value, which represents her, more than $2,100, and cannot recover against the sureties in the stipulation more than that amount. Therefore, this being a suit *in rem.*, only the value of the vessel represented by the stipulation is all that is in dispute, because that is all that the libellant can obtain or the stipulators can lose in this suit." In that case it was held that there was no personal liability.

In Richmond *vs.* Milwaukie, 21 How'd, 83, an appeal from a decree enjoining the conveyance of land sold for taxes, the land being valued at $500, Taney, C.-J., said: "The taxes assessed were charged upon the respective lots, and created no personal responsibility on the owner, the lots alone being liable for the payment." In this case the taxes assessed exceeded the assessed value of the lots more than 200 per centum.

The value of the lots being under $2,000, its appeal was dismissed for want of jurisdiction.

In Greener *vs.* U. S., (11 How'd, 164,) in admiralty, where it was agreed below that the vessel was worth $2,000, but on sale she brought only $850, Taney, C.-J., said: "The vessel has been sold by consent of parties, and the proceeds paid into the registry. This sum of money is the only matter in controversy in this Court, and if the decree of the Circuit Court is affirmed or reversed, the decision could do nothing more than determine the right to this money," which is far below the sum necessary for jurisdiction. It was in that case held that the agreement as to value did not give jurisdiction, which could not be thus acquired by consent, and the appeal was dismissed.

See also Brown *vs.* Shannon, 20 How'd, 58.

It is respectfully insisted that the judgment and decree entered herein Apr. 13, 1885, should be annulled, and the appeal attempted to be taken be dismissed.

CHARLES M. MATTHEWS,

Solicitor and of Counsel for Thomas Knowles.